EimerStahl

Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604-2516
Tel 312 660 7600 Fax 312 692 1718

John K. Theis

(312) 660-7656
jtheis@eimerstahl.com

09-CV-00887-INDI

August 6, 2009

VIA FEDERAL EXPRESS

MR. JEFFREY N, LÜTHI
U.S. Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Room G-255, North Lobby
Washington, DC 20002-8004

09-887

Re: *IKO Roofing Shingle Products Liability Litigation*
MDL Docket No. _____

Dear Mr. Lüthi:

Enclosed for filing in the newly petitioned matter listed above and on behalf of Defendants IKO Manufacturing Inc., IKO Chicago Inc., and IKO Pacific Inc. are the originals and five copies each of the following:

(1) Defendants' Motion for Transfer of Actions to the Northern District of Illinois Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings;

(2) Memorandum in Support, with Attachments A-F;

(3) Schedule of Actions

Please return one file-stamped copy of the aforementioned items to me in the enclosed self-addressed Federal Express envelope.

Thank you for your assistance.

Sincerely,

John K. Theis

JKT/jml
Enclosures

cc: All counsel of record w/enclosures

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION	§ § § § § § § §	MDL DOCKET NO. _____

DEFENDANTS' MOTION FOR TRANSFER OF ACTIONS TO THE NORTHERN DISTRICT OF ILLINOIS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

Pursuant to 28 U.S.C. § 1407 and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants IKO Manufacturing, Inc., IKO Chicago, Inc. and IKO Pacific, Inc. ("IKO") hereby respectfully move the Judicial Panel on Multidistrict Litigation for an order: (a) transferring all virtually identical class actions regarding IKO roofing shingles, pending before various different federal district courts, as well as any cases that may subsequently be filed asserting similar or related claims, to a single district court, and (b) consolidating those actions for coordinated pretrial proceedings. Defendants respectfully request that the Panel transfer the actions to the United States District Court for the Northern District of Illinois, Eastern Division. In support of the transfer and consolidation of the actions, Defendants aver the following, as set forth more fully in the accompanying supporting Memorandum:

1. IKO Manufacturing, Inc., IKO Chicago, Inc., and IKO Pacific, Inc., related U.S. entities, are defendants in three actions: *Pamela D. McNeil et al. v. IKO Manufacturing, Inc. et al.*, Civil No. 1:09-cv-04443, pending before Judge Samuel Der-Yeghiayan in the United States District Court for the Northern District of Illinois (the "Illinois Action"); *Gerald P. Czuba et al. v. IKO Manufacturing, Inc. et al.*, Civil No. 09-CV-0409, pending before Judge William M.

Skretny in the United States District Court for the Western District of New York (the "New York Action"); and *Hight et al. v. IKO Manufacturing, Inc. et al.*, Civil No. 2:09-CV-00887-RSM, pending before Judge Ricardo S. Martinez in the United States District Court for the Western District of Washington (the "Washington Action"). A copy of Plaintiffs' Complaint in the Illinois Action is attached as "Attachment A" to the accompanying Memorandum, a copy of Plaintiffs' Amended Complaint in the New York Action is attached as "Attachment C" to the accompanying Memorandum, and a copy of Plaintiffs' Complaint in the Washington Action is attached as "Attachment D" to the accompanying Memorandum.

2. IKO, Manufacturing, Inc. is the sole defendant in *Debra Zanetti et al. v. IKO Manufacturing, Inc.*, Civil No. 2:09-CV-2017, pending before Judge Dickinson R. Debevoise in the United States District Court for the District of New Jersey (the "New Jersey Action"). A copy of Plaintiffs' Complaint in the New Jersey Action is attached as "Attachment B" to the accompanying Memorandum.

3. As required by 28 U.S.C. § 1407(a), and as set forth in detail in the accompanying Memorandum, the cases proposed for transfer and consolidation "involve one or more common questions of fact." The complaints contain virtually identical factual allegations with respect to the allegedly defective roofing shingles manufactured by Defendants, and premise recovery upon similar theories of liability. The prayer for relief is identical across all of the actions.

4. The proposed transfer and consolidation of these products liability class actions "will be for the convenience of parties and witnesses and will promote the just and efficient conduct" of these actions. 28 U.S.C. § 1407(a). Consolidation will also eliminate the risk of inadvertent and potentially problematic inconsistent rulings on pretrial motions as may occur if the related actions remain uncoordinated and pending before a number of different courts.

Consequently, the savings in time and expense that will result from consolidation will benefit Plaintiffs, Defendants and the judicial system.

5. Defendants respectfully request that this Panel grant their request to transfer and consolidate all related actions listed in the accompanying Schedule of Actions in the Northern District of Illinois because much of the documentary and testimonial evidence relevant to the common factual issues is located in or near Chicago, and because it is the most geographically central, convenient and accessible location for all of the parties.

6. This Motion is based on the Memorandum filed by Defendants in support of this Motion, the pleadings and papers on file herein, and such other matters as may be presented to the Panel at the time of any hearing.[1]

Dated: August 6, 2009

Respectfully submitted,

By: _____

Nathan P. Eimer
Andrew G. Klevorn
John K. Theis
EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Ave., Suite 1100
Chicago, Illinois 60604
Telephone: (312) 660-7600
Fax: (312) 692-1718

ATTORNEYS FOR DEFENDANTS
IKO MANUFACTURING, INC., IKO
CHICAGO, INC. AND IKO PACIFIC, INC.

[1] Pursuant to Rule 5.2(b) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants have simultaneously delivered copies of this Motion to the Clerk of each district court in which the related actions are pending.

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION	§ § § § § § § §	MDL DOCKET NO._____

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this Proof of Service was served by First Class Mail on August 6, 2009 to the following:

Clerks of the Courts where Actions are Pending

Clerk of the Court
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

Clerk of the Court
United States District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07101

Clerk of the Court
United States District Court for the Western District of New York
68 Court Street
Buffalo, NY 14202

Clerk of the Court
United States District Court for the Western District of Washington
700 Stewart Street
Seattle, WA 98101

Pamela D. McNeil and James K. Cantwil v. IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., and IKO Chicago, Inc.; N.D. Ill., No. 1:09-cv-04443

Michael Alan Johnson
Michael A. Johnson & Associates
Suite 203
415 N LaSalle Street
Chicago, IL 60610
Counsel for Plaintiffs Pamela McNeil and James Cantwil

Shawn J. Wanta
Halunen & Associates
IDS Center
80 South Eighth Street, Ste. 1650
Minneapolis, MN 55402
Counsel for Plaintiff Pamela McNeil and James Cantwil

Charles J. LaDuca
Brendan S. Thompson
Cuneo, Gilbert & LaDuca, LLP
507 C Street, N.E.
Washington, DC 20002
Counsel for Plaintiffs Pamela McNeil and James Cantwil

IKO Industries, Ltd.
1 Yorkdale Rd, Suite 602
Toronto, Ontario M6A 3A1
No appearance has been filed for this Defendant in this case.

IKO Sales, Ltd.
1 Yorkdale Rd, Suite 602
Toronto, Ontario M6A 3A1
No appearance has been filed for this Defendant in this case.

Debra Zanetti v. IKO Manufacturing, Inc.; D. N.J, No. 2:09-cv-02017

Michael M. Weinkowitz
Charles E. Schaffer
Arnold Levin
Levin, Fishbein, Sedran & Berman, Esqs.
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Counsel for Plaintiff Debra Zanetti

Vanessa M. Kelly
Schwartz Kelly, LLC
67 Beaver Avenue
Suite 25
Annandale, NJ 08801
Counsel for Defendant IKO Manufacturing, Inc.

Gerald P. Czuba, Curtis Czajka, and Richard Peleckis v. IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., and IKO Chicago, Inc.; W.D.N.Y., 1:09-cv-00409

Brendan S. Thompson
Charles J. DeLuca
Cuneo Gilbert & LaDuca, LLP
507 C Street, N.E.
Washington, DC 20002
Counsel for Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis

Arnold Levin
Levin, Fishbein Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Counsel for Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis

Clayton D. Halunen
Shawn J. Wanta
Christopher D. Jozwiak
Halunen & Associates
1650 IDS Center
80 S 8th Street
Minneapolis, MN 55404
Counsel for Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis

David G. Jay
69 Delaware Avenue
Suite 1103
Buffalo, NY 14202-3811
Counsel for Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis

Robert Shelquist
Lockridge Grindal Nauen P.L.L.P.
100 Washington Ave. South
Suite 2200
Minneapolis, MN 55401-2179
Counsel for Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis

Michael McShane
Audet & Partners, LLP
221 Main Street, Suite 1460
San Francisco, CA 94105
Counsel for Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis

IKO Industries, Ltd.
1 Yorkdale Rd, Suite 602
Toronto, Ontario M6A 3A1
No appearance has been filed for this Defendant in this case.

IKO Sales, Ltd.
1 Yorkdale Rd, Suite 602
Toronto, Ontario M6A 3A1
No appearance has been filed for this Defendant in this case.

Joseph W. Dunbar
Damon Morey LLP
200 Delaware Avenue
Suite 1200
Buffalo, NY 14202
Counsel for Defendants IKO Manufacturing, Inc., IKO Pacific, Inc., and IKO Chicago, Inc.

Michael Hight and Michael Augustine v. IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., and IKO Chicago, Inc.; W.D. Wash., 2:09-cv-00887

Kim D. Stephens
Nancy A. Pacharzina
Tousley Brain Stephens
1700 Seventh Ave
Ste 2200
Seattle, WA 98101
Counsel for Plaintiffs Michael Hight and Michael Augustine

Clayton D. Halunen
Shawn J. Wanta
Halunen & Associates
1650 IDS Center
80 S 8th Street
Minneapolis, MN 55404
Counsel for Plaintiffs Michael Hight and Michael Augustine

IKO Industries, Ltd.
1 Yorkdale Rd, Suite 602
Toronto, Ontario M6A 3A1
No appearance has been filed for this Defendant in this case.

IKO Sales, Ltd.
1 Yorkdale Rd, Suite 602
Toronto, Ontario M6A 3A1
No appearance has been filed for this Defendant in this case.

Jack Lovejoy
Cable Langenbach Kinerk & Bauer
1000 2nd Ave
Ste 3500
Seattle, WA 98104
Counsel for Defendants IKO Manufacturing, Inc., IKO Pacific, Inc., and IKO Chicago, Inc.

John K. Theis

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
MDL -_____- IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge
Plaintiffs: Pamela D. McNeil and James K. Cantwil, class representatives on behalf of themselves and others similarly situated **Defendants:** IKO Manufacturing, Inc., a Delaware corporation, IKO Industries, Ltd., a Canadian corporation, IKO Sales, Ltd., a Canadian corporation, IKO Pacific, Inc., a Washington corporation, and IKO Chicago, Inc., an Illinois corporation	Northern District of Illinois Eastern Division	1:09-cv-04443	Judge Samuel Der-Yeghiayan Magistrate Judge Martin C. Ashman
Plaintiffs: Debra Zanetti and Daniel Trongone, on behalf of themselves and others similarly situated **Defendant:** IKO Manufacturing, Inc., a Delaware corporation	District of New Jersey Newark Division	09-cv-02017-DR-MAS	Judge Dickinson R. Debevoise Magistrate Judge Michael A. Shipp

Plaintiffs: Gerald P. Czuba, Curtis Czajka, and Richard Peleckis, individually and on behalf of a Class of others similarly situated **Defendants:** IKO Manufacturing, Inc., a Delaware corporation, IKO Industries, Ltd., a Canadian corporation, IKO Sales, Ltd., a Canadian corporation, IKO Pacific, Inc., a Washington corporation, and IKO Chicago, Inc., an Illinois corporation	Western District of New York Buffalo Office	09-cv-0409 WMS	Judge William M. Skretny
Plaintiffs: Michael Hight and Michael Augustine, on behalf of themselves and all others similarly situated **Defendants:** IKO Manufacturing, Inc., a Delaware corporation, IKO Industries, Ltd., a Canadian corporation, IKO Sales, Ltd., a Canadian corporation, IKO Pacific, Inc., a Washington corporation, and IKO Chicago, Inc., an Illinois corporation	Western District of Washington Seattle Division	2:09-CV-00887-RSM	Judge Ricardo S. Martinez

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION	§ § § § § § § §	MDL DOCKET NO. _____

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR TRANSFER TO THE NORTHERN DISTRICT OF ILLINOIS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

PRELIMINARY STATEMENT

Defendants IKO Manufacturing Inc., IKO Chicago Inc. and IKO Pacific Inc. ("IKO") hereby submit this memorandum of law in support of their motion pursuant to 28 U.S.C. § 1407 to: (a) transfer the four virtually identical putative class actions listed in the Schedule of Actions filed herewith, as well as any cases that may subsequently be filed asserting similar or related claims, to the United States District Court for the Northern District of Illinois, Eastern Division, and (b) consolidate the actions for pretrial proceedings. Movants and Plaintiffs agree that, because the actions all revolve around the common issue of the durability of IKO roofing shingles, transfer and consolidation of these actions to a single court will benefit all parties by eliminating duplicative discovery, and will conserve the resources of the judiciary, the parties and their counsel. Defendants contend that consolidation of these widely dispersed national actions in the Northern District of Illinois, to which many of the relevant witnesses and documents lay in close proximity, will provide a convenient and centralized metropolitan location for pretrial proceedings.

BACKGROUND

The four actions currently pending are: *McNeil et al. v. IKO Manufacturing Inc. et al.*, Civil No. 1:09-cv-04443 (N.D. Ill. filed July 24, 2009) (pending before Judge Samuel Der-Yeghiayan) ("the Illinois Action") (Complaint attached hereto as Attachment A);[1] *Zanetti et al. v. IKO Manufacturing Inc.*, Civil No. 2:09-CV-2017 (D.N.J. filed Apr. 29, 2009) (pending before Judge Dickinson R. Debevoise) ("the New Jersey Action") (Amended Complaint attached hereto as Attachment B); *Czuba et al. v. IKO Manufacturing Inc. et al.*, Civil No. 09-CV-0409 (W.D.N.Y. filed Apr. 29, 2009) (pending before Judge William M. Skretny) ("the New York Action") (Amended Complaint attached hereto as Attachment C); and *Hight et al. v. IKO Manufacturing Inc. et al.*, Civil No. 2:09-CV-00887-RSM (W.D. Wash. filed June 26, 2009) (pending before Judge Ricardo S. Martinez) ("the Washington Action") (Complaint attached hereto as Attachment D).[2] This motion is brought on behalf of Defendants IKO Manufacturing Inc., IKO Chicago Inc. and IKO Pacific Inc.[3] In the New Jersey Action, only IKO Manufacturing Inc. has been named as a defendant; in the remaining actions, IKO Chicago, IKO Pacific and IKO Manufacturing have all been named as defendants. Plaintiffs in the actions claim to be homeowners whose houses were allegedly equipped with IKO roofing shingles over the last thirty years.

In their complaints, all Plaintiffs allege an identical grievance using effectively the same language: that roofing shingles manufactured by Defendants and installed on homes purchased by Plaintiffs gradually deteriorated over time. As a result of that deterioration, the complaints

[1] On April 30, 2009, Plaintiffs filed a Class Action Complaint in the Central District of Illinois. Plaintiffs voluntarily dismissed that action on July 22, 2009 and refiled a Class Action Complaint in the Northern District of Illinois on July 24, 2009.

[2] The docket reports for each individual action are attached hereto as Attachment E.

[3] Plaintiffs have also listed two Canadian entities, IKO Sales Ltd. and IKO Industries Ltd., as defendants in three of the actions. Those defendants have not yet been served and are not parties to this motion.

allege, Plaintiffs received a product that did not conform to the product promised to them and suffered damage to their homes. Plaintiffs seek to certify classes of consumers who purchased homes on which IKO shingles were installed since 1979. The Illinois Action seeks to certify classes of homeowners in Michigan; the New Jersey Action, homeowners in New Jersey; the New York Action, homeowners in New York; and the Washington Action, homeowners throughout the United States. Each complaint alleges similar legal theories, sounding in negligence, products liability, breach of contract, breach of express and implied warranties, unjust enrichment, fraudulent inducement and consumer fraud.[4] Plaintiffs seek judgment against Defendants and an award of injunctive relief, damages and costs. There have been no answers to the complaints, no substantive motions, no discovery and no significant pretrial activities in any of the actions.

The Northern District of Illinois, the forum of the Illinois Action and the home of defendant IKO Chicago, Inc., is the appropriate transferee forum for these MDL proceedings. A substantial portion of the shingles that are the subject of the actions were manufactured in facilities located in either Chicago, Illinois or nearby Kankakee, Illinois. Further, all customer complaints and warranty claims for shingles sold in the United States are processed by a facility located in either Chicago or Kankakee. In addition, marketing for IKO shingles sold in the United States has been managed by offices located in either Chicago or Kankakee. Finally, both the president and chief financial officer for IKO's shingle operations in the United States have been located in the Chicago or Kankakee offices. *See* Declaration of David Koschitzky, contained in Attachment F.

[4] In the Washington Action, the Plaintiffs' theories of recovery are actionable misrepresentation, violation of Washington's Products Liability Act, RCW §§ 7.72 *et seq.*, breach of express warranty, violation of Washington's Consumer Protection Act, RCW §§ 19.86 *et seq.*, and unjust enrichment.

ARGUMENT

I. The Actions Should Be Transferred and Consolidated for Pretrial Proceedings

Actions that involve common questions of fact may be transferred and consolidated under section 1407 in order to "serve the convenience of parties and witnesses" and to "promote the just and efficient conduct of such actions." 28 U.S.C. § 1407. The purpose of transfer by the Judicial Panel on Multidistrict Litigation ("Panel") is to (1) eliminate duplicative discovery, (2) avoid conflicting rulings and schedules, (3) reduce litigation costs, and (4) conserve the time and effort of the parties, attorneys, witnesses and courts. *Manual for Complex Litigation (Fourth)* § 20.131 (2004) (citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968)). *See In re Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d 1380, 1381 (J.P.M.L. 2008) (holding centralization "necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary").

The actions described above, which are all premised on virtually identical factual allegations and nearly facsimile complaints, present ideal candidates for pretrial consolidation. Indeed, without consolidation, the important objectives and advantages of the multidistrict litigation rules would be defeated. Plaintiffs in these actions agree that pretrial consolidation would be appropriate and desirable.

A. The Actions Present Common Factual Allegations

Actions that share "common questions of fact" should be consolidated for pretrial proceedings. *See, e.g., In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Prods. Liab. Litig.*, 598 F. Supp. 2d 1372, 1373 (J.P.M.L. 2009) (ordering consolidation of cases involving an allegation of a "common defect" in an engine because each action alleged that the engine's

defective design caused it to gradually malfunction). Actions whose factual allegations are virtually identical pose a high probability of overlapping discovery, as well as of duplicative "discovery disputes, dispositive motions, and issues relating to experts." *Id.*

It follows that, absent consolidation, the actions in the present case, whose complaints mirror one another almost verbatim, would undoubtedly involve the possibility of duplicative discovery, inefficiency and inconsistent pretrial rulings. Despite a few minor differences, the factual and class allegations in the Illinois Complaint, ¶¶ 1–10, 22–29, the New Jersey Amended Complaint, ¶¶ 1–14, 22–30, the New York Amended Complaint, ¶¶ 4–13, 26–33, and the Washington Complaint, ¶¶ 5.1–5.14, 7.2–7.8, are indistinguishable.[5] The descriptions of the named plaintiffs are duplicative.[6] The class definitions proposed in each complaint are, other than the substitution of the particular geographic area, identical.[7] In specifying the questions of fact and law common to all class members, plaintiffs in each action provide a verbatim list, including the question: "Whether the Shingles are defective in that they are subject to moisture penetration, cracking, curling, blistering, blowing off the roof, prematurely failing, and are not suitable for use as an exterior roofing product for the length of time advertised, marketed, and

[5] *Compare, e.g.*, Illinois Compl. ¶ 5 ("IKO has consistently represented to consumers that it is 'Setting the Standard' for 'quality, durability, and innovation.' Defendants have not lived up to that promise."), *with* New Jersey Am. Compl. ¶ 9 ("IKO has consistently represented to consumers that it is 'Setting the Standard' for 'quality, durability, and innovation.' Defendant has not lived up to that promise."), New York Am. Compl. ¶ 8 ("IKO has consistently represented to consumers that it is 'Setting the Standard' for ' quality, durability, and innovation.' Defendant has not lived up to that promise."), *and* Washington Am. Compl. ¶¶ 5.5–56 ("[IKO] describes its warranty as 'IRON CLAD' and claims it is 'Setting the Standard' for 'quality, durability, and innovation.' But IKO's Shingles have not lived up to that promise.").

[6] *See, e.g.*, Illinois Compl. ¶ 11 ("Ms. McNeil purchased a new home outfitted with IKO Shingles in approximately 2001. She first became aware of the problem with her shingles in approximately 2005 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before Plaintiff filed this Complaint."); New York Am. Compl. ¶ 14 ("Mr. Czuba purchased a new home outfitted with IKO Shingles in approximately 1997. He first became aware of the problem with his shingles in approximately 2006 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before he filed this Complaint."). *See also* New Jersey Am. Compl. ¶ 15; Washington Compl. ¶ 2.1.

[7] *See* Illinois Am. Compl. ¶ 21; New Jersey Am. Compl. ¶ 21; New York Am. Compl. ¶ 25; Washington Compl. ¶ 7.1.

warranted."[8] Thus, it is plain that substantial overlap exists among the allegations contained in the complaints.

B. Transfer Will Serve the Convenience of Parties and Witnesses and Promote the Just and Efficient Conduct of the Actions

Transfer of these cases will also achieve the objectives of convenience and efficiency mandated by § 1407. First, transfer and consolidation is convenient to the parties and the witnesses because discovery issues in the cases will coincide significantly. *See In re Chrysler LLC*, 598 F. Supp. 2d at 1373. The factual allegations, technical underpinnings and theories of recovery of each action are similar, if not identical. Thus, the parties will certainly seek many of the same documents and information. This may include, among other things, information concerning warranties, product tests and evaluations, documentation of quality control, customer complaints and industry standards, and expert testimony regarding shingle technology, manufacture and lifespan. In a prior case, the Panel consolidated several products liability actions premised upon allegations of defective roofing shingles similar to the allegations advanced in the present actions. *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 474 F. Supp. 2d 1357 (J.P.M.L. 2007). Similar to the present actions, the plaintiffs in *In re Certainteed Corp.* brought:

> overlapping putative class actions . . . on behalf of owners of buildings with allegedly defective roofing shingles manufactured, warranted, and distributed by CertainTeed . . . [,] assert[ing] claims of negligence and products liability, among other causes of action, arising from the affected roofing shingles and the resultant property damage alleged.

Id. at 1358. According to the Panel, centralization of the *CertainTeed* actions was necessary in order to conserve resources and to avoid inconsistent pretrial rulings. *Id.* As in *CertainTeed*,

[8] Illinois Am. Compl. ¶ 24a; New Jersey Am. Compl. ¶ 24a; New York Am. Compl. ¶ 28a. *See* Washington Compl. ¶ 7.5.1 ("Whether IKO Shingles are defective in that they fail prematurely and are not suitable for use as an exterior roofing product for the length of time advertised, marketed and warranted[.]").

centralization is necessary to converve resources and to avoid inconsistent pretrial rulings. Further, without consolidation, many witnesses will be forced to undergo multiple depositions, and the parties will be forced to produce voluminous documents multiple times, answer overlapping interrogatories, and possibly engage in identical discovery disputes.

Second, given the overlap of parties, the near identity of factual allegations, the substantial overlap of legal issues and the likelihood that the same documents and testimony will be relevant to all of the actions, consolidation will conserve judicial resources and prevent inconsistent rulings. *See In re Mentor Corp. Obtape Transobturator Sling Prods. Liab. Litig.*, 588 F. Supp. 2d 1374, 1375 (J.P.M.L. 2008) [hereinafter *In re Mentor Corp.*] (stating that centralization of such an action would "minimize[] the risk of duplication or inconsistency and . . . thereby lead[] to the just and expeditious resolution of all actions to the overall benefit of those involved." (internal quotations omitted)). Plaintiffs in the Illinois, New Jersey and New York Actions seek to certify classes of plaintiff homeowners defined identically but for the state of residence of each class, and Plaintiffs in the Washington Action seek to certify a similarly defined class that encompasses the entire United States. As such, consolidation would conserve judicial resources by permitting one court to preside over and decide pretrial motions (for example, class certification and summary judgment) that are likely to mirror one another substantially. Indeed, avoidance of inconsistent determinations about class certification "presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts." *In re Multidistrict Private Civil Treble Damage Litig. Involving Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970). *See also In re High Sulfur Content Gasoline*

Prods. Liab. Litig., 344 F. Supp. 2d 755, 757 (J.P.M.L. 2004) (transferring five actions in part to "prevent inconsistent pretrial rulings, especially with respect to class certification.").

Because of the similarity of the complaints, transfer of the actions to a single court for pretrial proceedings would ensure that those pretrial motions are decided on a consistent basis. This puts each party on equal footing and prevents the inequitable result of Plaintiffs and Defendants receiving different rulings in different courts, or of Defendants being subjected to inconsistent injunctive relief. *See In re Pfizer Inc. Sec., Derivative & "ERISA" Litig.*, 374 F. Supp. 2d 1348, 1349 (J.P.M.L. 2005) (holding centralization "necessary in order to . . . prevent inconsistent pretrial rulings, especially with respect to questions of class certification").

Finally, absent consolidation, any discovery dispute that may arise would have to be litigated multiple times in multiple forums, with a resulting waste of judicial and party resources to no discernible purpose, and with the very real possibility that courts would resolve the disputes in a manner that imposed conflicting standards upon the parties. *See In re Yamaha Motor Corp. Rhino ATV Prods. Liab. Litig.*, 597 F. Supp. 2d 1377, 1378 (J.P.M.L. 2009) ("Centralization will enable the transferee judge to make consistent rulings on such discovery disputes from a global vantage point."). In short, consolidation of these actions would fulfill the basic goals of §1407, considerably enhance the convenience of all parties, and conserve the resources of the judiciary and of the parties involved in these cases.

II. The Northern District of Illinois is the Appropriate Forum for These Cases

Defendants respectfully suggest that the Panel transfer the actions (as well as any tag-along complaints) to the United States District Court for the Northern District of Illinois, where one of the actions is currently pending. The Panel has cited to a number of factors for selecting the appropriate district for transfer and consolidation, including: (1) where the evidence, parties

and witnesses are located;[9] (2) the geographical convenience and accessibility of the district to the litigants;[10] (3) the preferences of the parties;[11] (4) whether cases are already pending in a particular district;[12] (5) whether a particular district court judge has already invested significant time in developing familiarity with the issues likely to arise in the consolidated cases;[13] (6) whether a particular action was filed early or has advanced procedurally;[14] (7) relative docket conditions in various districts;[15] and (8) the availability of a court with the experience and resources to handle multidistrict litigation.[16]

Some of the factors are inconclusive here. The cases were all recently filed, and none has advanced procedurally. Thus, no judge has already invested significant time in developing familiarity with the issues involved. The remaining factors, however, favor the Northern District of Illinois.

A. Location of Evidence, Parties and Witnesses

The factor of proximity to the evidence, parties and witnesses that will comprise the bulk of the common litigation in these actions heavily favors the Northern District of Illinois. *See In re Potash Antitrust Litig. (No. II)*, 588 F. Supp. 2d 1364 (J.P.M.L. 2008) (consolidating four

---

[9] *See In re Potash Antitrust Litig. (No. II)*, 588 F. Supp. 2d 1364 (J.D.M.L. 2008) (transferring to a district where witnesses and documents were likely to be located).

[10] *See, e.g., In re Intel Corp. Microprocessor Antitrust Litig.*, 403 F. Supp. 2d 1356, 1357 (J.P.M.L. 2005) (consolidating ten California actions and four Delaware actions in the District of Delaware because Delaware was a geographically convenient location for the litigants).

[11] *See, e.g., In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (choosing a forum on the basis of the preferences of several of the parties).

[12] *See In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d 1370, 1372 (J.P.M.L. 2004) (transferring cases to district with the largest number of pending actions).

[13] *See In re Train Derailment Near Tyrone, Okla., On April 21, 2005*, 545 F. Supp. 2d 1373, 1374 (J.P.M.L. 2008) (transferring cases to judge who had "already developed familiarity with the issues involved as a result of presiding over motion practice and other pretrial proceedings for the past two years").

[14] *See In re Edward H. Okun I.R.S. § 1031 Tax Deferred Exch. Litig.*, 609 F. Supp. 2d 1380, 1381–82 (J.P.M.L. 2009) (transferring to the district where earlier filed and "most procedurally advanced" action was pending).

[15] *See In re Packaged Ice Antitrust Litig.*, 560 F. Supp. 2d 1359, 1361 (J.P.M.L. 2008) (transferring to a district with "favorable caseload conditions").

[16] *See In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d at 1372 (choosing a transferee forum with "the resources" to handle a complex multidistrict antitrust docket); *In re Human Tissue Prods. Liab. Litig.*, 435 F. Supp. 2d 1352, 1354 (J.P.M.L. 2006) (transferring cases to "a jurist who has the experience necessary to steer this litigation on a prudent course").

cases in the Northern District of Illinois because "[t]wo defendants are headquartered in that district, and relevant documents and witnesses may be located there"); *In re Pfizer Inc. Sec., Derivative & "ERISA" Litig.*, 374 F. Supp. 2d at 1350 (transferring actions to the district where "Pfizer has its headquarters and many individual defendants reside, and therefore relevant witnesses and documents will likely be found there").

The contacts of the IKO defendants with the state of Illinois and the Northern District of Illinois are manifest:

- A substantial portion of the shingles that are the subject of the actions were manufactured in facilities located in either Chicago, Illinois or Kankakee, Illinois (which is approximately 60 miles from Chicago);
- Since 1989, all customer complaints and warranty claims for shingles sold in the United States are received, processed and handled by a facility located in either Chicago, Illinois or Kankakee, Illinois;
- Since 1997, marketing for IKO shingles sold in the United States, including the distribution of advertising as well as promotional and marketing materials, has been managed by offices located in either Chicago, Illinois or Kankakee, Illinois;
- Since 1983, the chief financial executive for IKO's shingle operations in the United States has been located in either Chicago, Illinois or Kankakee, Illinois;
- The president for IKO's shingle operations in the United States maintained an office in Chicago, Illinois for the period 1981 – 1995.

See Declaration of David Koschitzky, contained in Attachment F. These contacts strongly favor consolidation of the actions in the Northern District of Illinois. As these claims focus upon the quality of IKO's roofing shingles and supposed representations made by IKO in connection with the sale and marketing of its shingles, the presence in Chicago or nearby of IKO's customer service, claims processing and marketing operations for the United States will facilitate the effective and efficient administration of these cases. In particular, fewer problems with respect to the availability of witnesses and documents are likely to arise because a substantial portion of

the shingles that form the common focus of these actions were manufactured in Chicago or nearby. In addition, since 1989, IKO's customer service operations have been located in or near Chicago; its product warranty testing activities were conducted in or near Chicago, and its product marketing materials were distributed from or near Chicago. Accordingly, much of the documentary evidence and witnesses will be available in the Northern District of Illinois.

In fact, the Panel recently reached the same conclusion in the *Certainteed* shingle litigation, selecting the Eastern District of Pennsylvania in large part because it "encompasses the headquarters of the common defendant and its business unit responsible for shingle products . . . ." *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 474 F. Supp. 2d at 1358. Given the similarity of the circumstances outlined above to those in *Certainteed*, the Northern District of Illinois makes the most sense for consolidation of these actions.

In contrast, the District of New Jersey—where the IKO Defendants understand the Plaintiffs wish to have these actions consolidated—offers no such benefits. Other than the sale of shingles, IKO has no contacts with New Jersey. It has no manufacturing facilities, customer service operations, marketing offices or corporate facilities in New Jersey. *See* Declaration of David Koschitzky, contained in Attachment F. Neither IKO documents nor witnesses are likely to be found in New Jersey. As such, consolidation of these actions in the District of New Jersey would not promote the convenience of the parties, facilitate the availability of witnesses and evidence, or conserve resources. Nor do any of the other districts in which the remaining actions are pending offer the level of benefits, in terms of accessibility to witnesses and documents, that the Northern District of Illinois does. Other than the sale of shingles, IKO has no operations in New York and, with the sole exception of a small office that closed in the early 1980's, has had no offices there. *Id.* Similarly, while IKO does have a shingle manufacturing facility in Sumas,

Washington and sells shingles in Washington, IKO does not have customer service, warranty processing, or marketing operations in Washington. *Id.* Because such operations are likely to play a significant role in each of the various actions, their absence from Washington weighs strongly against transfer to Washington.

Put simply, the Northern District of Illinois presents the "strong[est] nexus" to the common factual questions and common discovery in this litigation. *In re Publ'n Paper Antitrust Litig.*, 346 F. Supp.2d 1370, 1372 (J.P.M.L. 2004). Transfer to the Northern District of Illinois will facilitate the efficient pretrial administration of these actions.

B. Convenience and Accessibility

Second, convenience and accessibility favor the Northern District of Illinois. This Panel has recognized that the Northern District of Illinois, Eastern Division, is located in an easily accessible metropolitan area. *See, e.g., In re Air Crash over Makassar Strait, Sulawesi, Indonesia, on Jan. 1, 2007*, MDL No. 2037, 2009 WL 1740571, at *1 (J.P.M.L. June 17, 2009) (consolidating cases in the Northern District of Illinois because of its "convenience and accessibility" as a "metropolitan district[]").

In addition, the wide geographic dispersion of actions and parties counsels strongly in favor of a centralized location accessible to all parties. *See In re Gadolinium Contrast Dyes Prods. Liab. Litig.*, 536 F. Supp. 2d at 1382 (choosing "a relatively central forum for [the] nationwide litigation"); *In re Multidist. Litig. Involving Butterfield Patent Infringement*, 328 F. Supp. 513, 515 (J.P.M.L. 1970) ("Since Chicago is geographically central, we think the convenience of the parties will best be served by transfer to . . . the Northern District of Illinois.").

As in *Butterfield* and *Gadolinium*, Defendants and Plaintiffs are geographically widespread, and would find Chicago a convenient center of gravity. These actions (and the Plaintiffs and Defendants litigating them) stretch west to the Pacific Ocean and east to the Atlantic. The Northern District of Illinois is far more convenient for Plaintiffs located in Michigan and Washington, than would be any venue on the eastern seaboard. In addition, Defendants' law firm is located in Chicago, as is one of the Plaintiffs' attorneys in the Illinois Action, and the law firm that represents Plaintiffs in each action, Halunen & Associates, is located in Minneapolis, Minnesota and has an office in Chicago. *See In re Air Crash Disaster Near Chicago, Illinois, on May 25, 1979*, 476 F. Supp. 445, 449 (J.P.M.L. 1979) (transferring widely dispersed actions to the centrally located Northern District of Illinois because transfer to either coast "would [have] require[d] transcontinental travel for those attorneys and parties located on one side of the continent who need[ed] or desire[d] to participate in pretrial proceedings conducted at the other.").

C. Preference of the Parties

All three Defendants favor the Northern District of Illinois as the appropriate venue. *See In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (choosing a forum in part because it "enjoy[ed] the support" of numerous parties). Many of the activities that lie at the core of the various actions -- including the manufacture of shingles, claims processing and product marketing -- have been conducted by IKO in or near Chicago. *See* Declaration of David Koschitzky, contained in Attachment F. Defendants thus prefer to litigate pretrial proceedings in Chicago, which is a key location for IKO's activities in the United States.

D. Experience, Resources and Docket Conditions of Transferee Court

The Northern District of Illinois possesses the resources to manage a complex multidistrict products liability docket, as well as the capacity to absorb all of the pending and tag-along nationwide actions related to IKO's roofing shingles. *See In re Celexa & Lexapro Prods. Liab. Litig.*, 416 F. Supp. 2d 1361, 1363 (J.P.M.L. 2006) (choosing a forum "sitting in a centrally located district with the capacity to handle" a number of complex products liability cases); *In re Publ'n Paper Antitrust Litig.*, 346 F. Supp. 2d at 1372 (selecting a transferee forum with "the resources that this complex antitrust docket is likely to require").

In addition, the Northern District of Illinois is well versed in multidistrict litigation. *See In re Janus Mutual Funds Inv. Litig.*, 310 F. Supp. 2d 1359, 1361 (J.P.M.L. 2004) ("[W]e have searched for a transferee district with the capacity and experience to steer this litigation on a prudent course."). The Panel has repeatedly recognized that the Northern District of Illinois has significant experience in handling complex multidistrict class action litigation. *See, e.g., In re Air Crash Over Makassar Strait*, 2009 WL 1740571, at *1; *In re Text Messaging Antitrust Litig.*, 588 F. Supp. 2d 1372, 1373 (J.P.M.L. 2008); *In re BP Prods. N. Am., Inc., Antitrust Litig. (No. II)*, 560 F. Supp. 2d 1377, 1379 (J.P.M.L. 2008). In fact, many judges in the Northern District of Illinois have familiarity with MDL proceedings. *See, e.g.*:

- *In re Dairy Farmers of Am., Inc., Cheese Antitrust Litig.*, No. MDL 2031, 2009 WL 1740566 (J.P.M.L. June 15, 2009) (Hibbler, J.);
- *In re Potash Antitrust Litig. (No. II)*, 588 F. Supp. 2d 1364 (Castillo, J.);
- *In re Aon Corp. Wage & Hour Employment Practices Litig.*, 581 F. Supp. 2d 1376 (J.P.M.L. 2008) (Kocoras, J.);
- *In re Aftermarket Filters Antitrust Litig.*, 572 F. Supp. 2d 1373 (J.P.M.L. 2008) (Gettleman, J.);
- *In re McDonald's French Fries Litig.*, 560 F. Supp. 2d 1355 (J.P.M.L. 2008) (Bucklo, J.);
- *In re Air Crash Near Medan, Indonesia, on Sept. 5, 2005*, 544 F. Supp. 2d 1379 (J.P.M.L. 2008) (Grady, J.);

- *In re Aqua Dots Prods. Liab. Litig.*, 545 F. Supp. 2d 1369 (J.P.M.L. 2008) (Coar, J.);
- *In re Tex. Roadhouse Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 542 F. Supp. 2d 1370 (J.P.M.L. 2008) (Norgle, J.);
- *In re RC2 Corp. Toy Lead Paint Prods. Liab. Litig.*, 528 F. Supp. 2d 1374 (J.P.M.L. 2007) (Leinenweber, J.).

Furthermore, the Northern District of Illinois is more efficient than the other districts in terms of moving cases through the docket. According to the Administrative Office of U.S. Courts, the median time interval from suit to disposition for all cases was 6.2 months in the Northern District of Illinois, 7.6 months in the District of New Jersey, 7.1 months in the Western District of Washington, and 11.9 months in the Western District of New York.[17]

Given the experience of the Northern District of Illinois in handling complex multidistrict litigation and its superior resources and efficiency, transfer of the subject actions to the Northern District of Illinois is appropriate.

E. Pending Cases and Time of Filing

One of the cases is currently pending in the Northern District of Illinois, a factor that favors consolidation there. Although other actions were filed before the case pending in the Northern District of Illinois, none of the pending actions has advanced at all procedurally or substantively. In fact, the only motions that the judges in any action have considered are unopposed motions for the extension of time to file responsive pleadings and motions to admit *pro hac vice*. Important as well, the New Jersey Action – the forum plaintiffs have indicated they seek to have all of the actions transferred – only names IKO Manufacturing as a defendant. Thus, the New Jersey Action does not have the full complement of named U.S. IKO entities before it.

[17] Administrative Office of the United States Courts, "Table C-5, U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending September 30, 2008," *2008 Annual Report of the Director: Judicial Business of the United States Courts* (U.S. Government Printing Office, 2009), *available at* http://www.uscourts.gov/judbus2008/contents.cfm.

Selecting the forum with the earliest filed case offers an advantage where the judge in that forum has invested more time in the case and has gained more familiarity with the issues than has any other judge. *See, e.g.*, *In re Mentor Corp.*, 588 F. Supp. 2d at 1375 (selecting the forum in which the first-filed action was pending because that action was more procedurally advanced). In the present case, however, because none of the pending actions has taken any procedural or substantive steps, that advantage does not exist and this factor is of little importance.

In sum, a substantial portion of the relevant discovery on the common factual issues in this case will come from the Chicago area, and Chicago is undoubtedly the most convenient and centralized location for the parties as a whole. The balance of the factors of convenience, the location of evidence, the parties' preferences, the transferee court's experience and resources, and the limited procedural development of the actions supports transfer to the Northern District of Illinois.

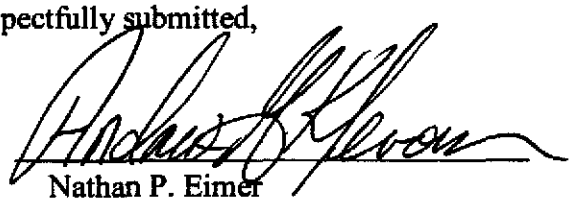
* * *

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Panel consolidate the four cases listed in the Schedule of Actions, and all subsequently filed actions related to IKO roofing shingles, for pretrial proceedings, and transfer the actions to the United States District Court for the Northern District of Illinois, Eastern Division.

Dated: August 6, 2009

Respectfully submitted,

By: 

Nathan P. Eimer
Andrew G. Klevorn
John K. Theis
EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Ave., Suite 1100
Chicago, Illinois 60604
Telephone: (312) 660-7600
Fax: (312) 692-1718

ATTORNEYS FOR DEFENDANTS
IKO MANUFACTURING INC., IKO
CHICAGO INC. AND IKO PACIFIC INC.

Attachment A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

PAMELA D. MCNEIL and
JAMES K. CANTWIL,
class representatives on behalf of
themselves and others similarly
situated,

Plaintiffs,

v.

Civil No.

CLASS ACTION COMPLAINT
AND JURY DEMAND

IKO MANUFACTURING, INC., a
Delaware Corporation,
IKO INDUSTRIES, LTD., a
Canadian
corporation,
IKO SALES, LTD., a Canadian
corporation,
IKO PACIFIC, INC., a Washington
corporation, and
IKO CHICAGO, INC., an Illinois
corporation,

Defendants.

Plaintiffs, on behalf of themselves and others similarly situated, by and through their undersigned counsel, file this Class Action Complaint, and in support thereof state and aver as follows:

NATURE OF ACTION

1. This is a consumer class action on behalf of all persons and entities who purchased IKO shingles manufactured or distributed by Defendants under various trade names.

2. Defendants, (collectively "IKO"), has a shingle manufacturing plant in Kankakee, Illinois where it produces a significant quantity of shingles for distribution and sale nationwide. IKO manufactured and marketed roofing shingle products sold under various brands and product names (hereinafter "Shingles"). The Shingles, which are composed of asphalt, natural fibers, filler and mineral granules, have been marketed and warranted by Defendant as durable, and as offering long-lasting protection.

3. IKO manufactured, warranted, advertised and sold defective Shingles to tens of thousands of consumers throughout the United States. Defendants failed to adequately design, formulate, and test the Shingles before warranting, advertising and selling them as durable and suitable roofing products. Defendants warranted, advertised and sold to Plaintiffs and the Class Shingles that Defendants reasonably should have known were defectively designed, failed prematurely due to moisture invasion, cracking, curling, blistering, deteriorating, blowing off the roof, or otherwise not performing in accordance with the reasonable expectations of Plaintiffs and the Class that such products

be durable and suitable for use as roofing products. As a result, Plaintiffs and the Class have experienced continuous and progressive damage to their property.

4. Defendants' sales brochures state that the Shingles are, among other things "[t]ime-tested and true" and "an excellent choice for exceptional roofing value."

5. IKO has consistently represented to consumers that it is "Setting the Standard" for "quality, durability, and innovation." Defendants have not lived up to that promise.

6. Defendants market their warranty as "IRON CLAD."

7. Plaintiffs' Shingles have begun to fail, are failing and will fail before the time periods advertised, marketed and guaranteed by IKO.

8. As a result, Plaintiffs and the Class have suffered actual damages in that the roofs on their homes, buildings and other structures have and will continue to fail prematurely, resulting in damage to the underlying structure and requiring them to expend thousands of dollars to repair the damages associated with the incorporation of the Shingles into their homes, buildings and other structures or to prevent such damage from occurring. Damage caused by the defective Shingles has included, but is not limited to: damage to underlying felt, damage to structural roof components, damage to plaster and sheetrock, damage to

walls and ceiling structural components, decreased curb appeal, or decreased property value.

9. Because of the relatively small size of the typical individual Class member's claims, and because most homeowners or property owners have only modest resources, it is unlikely that individual Class members could afford to seek recovery against Defendants on their own. This is especially true in light of the size and resources of the Defendants. A class action is, therefore, the only reasonable means by which Class members can obtain relief from these Defendants.

10. The class Shingles suffer from a set of common defects, as described herein. Despite receiving a litany of complaints during the Class Period from consumers, such as Plaintiffs and the members of the Class, Defendants have refused to effectively notify consumers of the defects, or repair the property damaged by the defects.

PARTIES

11. At all relevant times Plaintiff and class representative Pamela D. McNeil was a citizen of Michigan with an address of 1827 Shaker Heights Dr., Bloomfield Hills, MI. Ms. McNeil purchased a new home outfitted with IKO Shingles in approximately 2001. She first became aware of the problem with her Shingles

in approximately 2005 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before Plaintiff filed this Complaint.

12. At all relevant times Plaintiff and class representative Dr. James K. Cantwil was a citizen of Michigan with an address of 8241 Fountain View Dr., Flushing, MI. Dr. Cantwil purchased a new home outfitted with IKO Shingles in approximately 1995. He first became aware of the problem with his Shingles in approximately 2008 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before Plaintiff filed this Complaint.

13. Defendant IKO Manufacturing Inc., is a Delaware corporation and operates a manufacturing plant located at 120 Hay Road, Wilmington, Delaware. IKO Manufacturing, Inc. is a leading North American manufacturer of roofing materials.

14. Defendant IKO Industries, Ltd. is a leading North American manufacturer and distributor of roofing materials and the parent company of Defendant IKO Manufacturing. The company is located at 71 Orenda Rd, Brampton, ON, L6W 1V8, Canada. IKO Industries, Ltd. is the owner of several patents that may apply to the Shingles manufactured by IKO Manufacturing Inc. The company operates manufacturing plants in the United States, Canada, and Europe.

15. Defendant IKO Sales, Ltd. is a leading North American manufacturer and distributor of roofing materials and the parent company of Defendants IKO Manufacturing and IKO Industries, Ltd. The company is located at 1600 42 Ave. SE, Calgary, AB, TG2 5B5, Canada. The company owns and operates manufacturing plants in the United States, Canada, and Europe.

16. Defendant IKO Pacific, Inc. is a Washington corporation with significant business operations located at 850 W. Front St, Sumas, Washington. IKO Pacific, Inc. manufactures, distributes, and sells Shingles throughout the United States.

17. Defendant IKO Chicago, Inc. is an Illinois corporation with significant business operations located at 235 W South Tec Dr, Kankakee, Illinois. IKO Chicago, Inc. manufactures, distributes, and sells Shingles throughout the United States.

JURISDICTION AND VENUE

18. Defendants have substantial business and manufacturing operations in Chicago, Illinois and conduct substantial business in Illinois, including the manufacture, sale, and distribution of the Shingles in Illinois and have sufficient contacts with Illinois or otherwise intentionally avail themselves of the laws and markets of Illinois, so as to sustain this Court's jurisdiction over Defendants.

19. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) in that Plaintiffs are class members and citizens of Michigan. Class Members, as defined below, are all citizens of Michigan. Defendants are citizens of Illinois and the amount in controversy exceeds Five Million Dollars ($5,000,000.00).

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391, *et seq.* because Defendants reside in Illinois, a substantial part of the events or omissions giving rise to the claim occurred in Illinois, and the Defendants are subject to personal jurisdiction in Illinois.

CLASS ALLEGATIONS

21. This action has been brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23, and case law thereunder on behalf of Plaintiffs and all others similarly situated, with the Class defined as follows:

> All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures, physically located in the State of Michigan, on which IKO Shingles are or have been installed since 1979. IKO Shingles are defined to include without limitation all shingles manufactured or distributed by IKO. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

22. Members of the Class are so numerous that their individual joinder is impracticable. The proposed class contains hundreds and perhaps thousands of members. The precise number of Class members is unknown to Plaintiffs. However, upon information and belief, Plaintiffs believe it is well in excess of 1,000. The true number of Class members is likely to be known by Defendants, and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

23. There is a well-defined community of interest among members of the Class. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, and all Class members, own homes, residences, or other structures on which defective Shingles manufactured by Defendants have been installed. Those Shingles have failed, and will continue to fail, prematurely. The representative Plaintiffs, like all Class members, have been damaged by Defendant's conduct in that they have suffered damages as a result of the incorporation of the defective Shingles into their homes or structures. Furthermore, the factual basis of Defendants' conduct are common to all Class members and represent a common thread of negligent conduct resulting in injury to all members of the Class.

24. There are numerous questions of law and fact common to Plaintiffs and the Class, and those questions predominate over any questions that may affect individual Class members, and include the following:

a. Whether the Shingles are defective in that they are subject to moisture penetration, cracking, curling, blistering, blowing off the roof, prematurely failing, and are not suitable for use as an exterior roofing product for the length of time advertised, marketed and warranted;

b. Whether Defendants should have known of the defective nature of the Shingles;

c. Whether Defendants owed a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture and marketing of the Shingles;

d. Whether Defendants breached their duty to Plaintiffs and the Class by designing, manufacturing, advertising and selling to Plaintiffs and the Class defective Shingles and by failing promptly to remove the Shingles from the marketplace or take other appropriate remedial action;

e. Whether the Shingles failed to perform in accordance with the reasonable expectations of ordinary consumers;

f. Whether the benefits of the design of the Shingles do not outweigh the risk of their failure;

g. Whether the Shingles fail to perform as advertised and warranted;

h. Whether Plaintiffs and the Class are entitled to compensatory damages, and the amount of such damages; and

i. Whether Defendants should be declared financially responsible for notifying all Class members of their detective Shingles and for all damages associated with the incorporation of such Shingles into Class Members' homes, residences, buildings and other structures.

25. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting statewide, multistate and national consumer class actions, actions involving defective products, and, specifically, actions involving defective construction materials. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class they represent, and have the financial resources to do so. Neither the Plaintiffs nor their counsel have any interest adverse to those of the Class.

26. Plaintiffs and the members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendants' conduct. A class action is

superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the vast majority of the Class members likely would find the cost of litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class member's claims, it is likely that only a few Class members could afford to seek legal redress for Defendants' conduct. Further, the cost of litigation could well equal or exceed any recovery. Absent a class action, Class members will continue to incur damages without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment would conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

27. Defendants are estopped from relying on any statutes of limitation by virtue of its acts of fraudulent concealment, which include Defendants' intentional concealment from Plaintiffs and the general public that their shingles were defective, while continually marketing the Shingles as dependable products that would last for decades. Defendants' acts of fraudulent concealment include failing to disclose that its Shingles were defectively manufactured and would deteriorate in less than half their expected lifetime, leading to damage to the

very structures they were purchased to protect. Through such acts Defendants were able to conceal from the public the truth concerning their product.

28. Until shortly before Plaintiffs filed their Complaint, Plaintiffs had no knowledge that the IKO Shingles they purchased were defective and unreliable. Plaintiffs had no reasonable way to discover this defect until shortly before Plaintiffs filed their Complaint.

29. Defendants had a duty to disclose that its Shingles were defective, unreliable, and inherently flawed in their design or manufacture.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Negligence)

30. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

31. Defendants had a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Shingles.

32. Defendants breached their duty to Plaintiffs and the Class by designing, manufacturing, advertising and selling to Plaintiffs and the Class a product that is defective and will fail prematurely, and by failing to promptly remove the Shingles from the marketplace or to take other appropriate remedial action.

33. Defendants knew or should have known that the Shingles were defective, would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not as warranted and represented by Defendant.

34. As a direct and proximate cause of Defendants' negligence, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes, residences, buildings and other structures an exterior roofing product that is defective and that fails prematurely due to moisture penetration. These failures have caused and will continue to cause Plaintiffs and the Class to incur expenses repairing or replacing their roofs as well as the resultant, progressive property damage.

35. Plaintiffs on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for establishment of a common fund, plus attorney's fees, interest and costs.

SECOND CAUSE OF ACTIONAGAINST ALL DEFENDANTS
(Strict Products Liability)

36. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

37. At all relevant times, Defendants were engaged in the business of manufacturing the Shingles which are the subject of this action.

38. The Shingles were expected to and did reach Plaintiffs and the Class without substantial change to the condition in which they were manufactured and sold by Defendants.

39. The Shingles installed on Plaintiffs' and the Class Members' properties were and are defective and unfit for their intended use. The use of the Shingles has caused and will continue to cause property damage to Plaintiffs and the Class.

40. Defendants' Shingles fail to perform in accordance with the reasonable expectations of Plaintiffs, the Class, and ordinary consumers, and the benefits of the design of the Shingles do not outweigh the risk of their failure.

41. By reason of the foregoing, Defendants are strictly liable to Plaintiffs and the Class.

42. Plaintiffs on behalf of themselves and all other similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest and costs.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Breach of Express Warranty)

43. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraph of this Complaint.

44. Defendants marketed and sold their Shingles into the stream of commerce with the intent that the Shingles would be purchased by Plaintiffs and members of the Class.

45. Defendants expressly warranted that its Shingles are permanent, impact resistant, and would maintain their structural integrity. Defendants' representatives through its written warranties regarding the durability of, and the quality of the Shingles created express warranties which became part of the basis of the bargain Plaintiffs and members of the Class entered into when they purchased the Shingles.

46. Defendants expressly warranted that the structural integrity of the Shingles purchased by Plaintiffs and Class members would last at least 20 years and as long as a lifetime.

47. Defendants breached their express warranties to Plaintiffs and the Class in that Defendants' Shingles are neither permanent nor impact resistant and did not, and do not, maintain their structural integrity and perform as promised. Defendants' Shingles crack, split, curl, warp, discolor, delaminate, blow off the roof, deteriorate prematurely, and otherwise do not perform as warranted by Defendants; and they have caused or are causing damage to the underlying roof

elements, structures or interiors of Plaintiffs' and Class members' homes, residences, buildings and structures.

48. Defendants' warranties fail their essential purpose because they purport to warrant that the Shingles will be free from structural breakdown for as much as 30 years when, in fact, Defendants' Shingles fail far short of the applicable warranty period.

49. Moreover, because the warranties limit Plaintiffs' and Class members' recovery to replacement of the Shingles piece by piece, with replacement labor not included, Defendants' warranties are woefully inadequate to repair and replace failed roofing, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the IKO Shingles. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

50. The limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

51. Defendant has denied or failed to pay in full the warranty claims or has not responded to warranty claims.

52. As a result of Defendants' breach of its express warranties, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their

homes and other structures an exterior roofing product that is defective and that has failed or is failing prematurely due to moisture penetration. This failure has required or is requiring Plaintiffs and the Class to incur significant expense in repairing or replacing their roofs. Replacement is required to prevent on-going and future damage to the underlying roof elements, structures or interiors of Plaintiffs' and Class members' homes and structures.

53. Plaintiffs on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest and costs.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Breach of Implied Warranty)

54. Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

55. At all times mentioned herein, Defendants manufactured or supplied IKO Shingles, and prior to the time it was purchased by Plaintiffs, Defendants impliedly warranted to Plaintiffs, and to Plaintiffs' agents, that the product was of quality and fit for the use for which it was intended.

56. Plaintiffs and Plaintiffs' agents relied on the skill and judgment of the Defendants in using the aforesaid product.

57. The Product was unfit for its intended use and it was not of merchantable quality, as warranted by Defendants in that it had propensities to break down and fail to perform and protect when put to its intended use. The aforesaid product did cause Plaintiffs to sustain damages as herein alleged.

58. After Plaintiffs was made aware of Plaintiffs' damages as a result of the aforesaid product, notice was duly given to Defendants of the breach of said warranty.

59. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class members suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Violation of Violation of Illinois
Consumer Fraud and Deceptive Business Practices Act)

60. Plaintiffs hereby incorporate by reference the allegations contained in the foregoing paragraphs of this Complaint as if set forth fully herein

61. The conduct described in this Complaint constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "CFA"), 815 Ill. Comp. Stat. 505/1 *et seq*.

62. Defendants violated the CFA by:

a. Making representations or misleading statements to induce customers to buy Shingles;

b. Concealing or failing to disclose material facts that would have caused consumers to understand that the Shingles were defective.

63. As a direct and proximate result of the deceptive, misleading, unfair and unconscionable practices of the Defendants set forth above, Plaintiffs and Class Members are entitled to actual damages, compensatory damages, penalties, attorney's fees and costs as set forth in Section 10a of the CFA.

64. The Defendants' deceptive, misleading, unfair and unconscionable practices set forth above were done willfully, wantonly and maliciously entitling Plaintiffs and Class Members to an award of punitive damages.

SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Fraudulent Concealment)

65. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

66. At all times mentioned herein, Defendants had the duty and obligation to disclose to Plaintiffs the true facts concerning the IKO Shingles; that is that said product was defective and unreliable. Defendants made the affirmative representations as set forth above to Plaintiffs, the Class, and the general public prior to the date Plaintiffs purchased the IKO Shingles while concealing the material described herein.

67. At all times mentioned herein, Defendants had the duty and obligation to disclose to Plaintiffs the true facts concerning the IKO Shingles, that is that

IKO Shingles were defective, would prematurely fail, and otherwise were not as warranted and represented by Defendants.

68. At all times mentioned herein, Defendants intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiffs and with the intent to defraud as herein alleged.

69. At all times mentioned herein, Plaintiffs and members of the Class were not aware of the facts set forth above and had they been aware of said facts, they would not have acted as they did, that is, would not have purchased IKO Shingles.

70. As a result of the concealment or suppression of the facts set forth above, Plaintiffs and the Class members sustained damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Breach of Contract)

71. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

72. Plaintiffs and the Class members have entered into certain contracts and warranty agreements with Defendants, including an express warranty. Pursuant to these contracts and agreements, including the express warranty, Defendants would provide Plaintiffs and the Class members with Shingles that were of

merchantable quality and fit for the use for which they were intended. Defendants were further obligated pursuant to the express warranty to repair or replace any defects or problems with the Shingles that Plaintiffs and the Class members experienced. In exchange for these duties and obligations, Defendants received payment of the purchase price for these Shingles from Plaintiffs and the Class.

73. Plaintiffs and the Class satisfied their obligations under these contracts, warranties and agreements.

74. Defendants failed to perform as required by the express warranty and breached said contracts and agreements because it provided Plaintiffs and the Class with Shingles that are defective and unfit for their intended use and failed to appropriately repair or replace the Shingles.

75. As a result of the foregoing, Plaintiffs and the Class members are entitled to compensatory damages in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Unjust Enrichment)

76. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

77. Substantial benefits have been conferred on Defendants by Plaintiffs and the Class, and Defendants have appreciated these benefits.

78. Defendants' acceptance and retention of these benefits under the circumstances make it inequitable for Defendants to retain the benefit without payment of the value to the Plaintiffs and the Class.

79. Defendants, by the deliberate and fraudulent conduct complained of herein, have been unjustly enriched in a manner that warrants restitution.

80. As a proximate consequence of Defendants' improper conduct, the Plaintiffs and the Class members were injured. Defendants hve been unjustly enriched, and in equity, should not be allowed to obtain this benefit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request of this Court the following relief, on behalf of themselves and all others similarly situated:

a. For an Order certifying the Plaintiffs' Class, appointing Plaintiffs as Class Representatives, and appointing the undersigned counsel of record as Class counsel;

b. Equitable and injunctive relief enjoining Defendants from pursuing the policies, acts, and practices described in this Complaint;

c. For damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;

d. Pre-judgment and post-judgment interest at the maximum rate allowable at law;

e. The costs and disbursements incurred by Plaintiffs and their counsel in connection with this action, including reasonable attorneys' fees; and

f. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and the members of the Class hereby demand trial by jury on all issues so triable.

Dated: July 23, 2009

HALUNEN & ASSOCIATES

/s Clayton Halunen
Clayton Halunen
Shawn J. Wanta
1650 IDS Center
80 South Eighth Street
Minneapolis, MN, 55402
Telephone: 612-605-4098
Facsimile: 612-605-4099

LEVIN, FISHBEIN & BERMAN
Charles Schaffer
Arnold Levin
510 Walnut Street - Suite 500
Philadelphia, PA 19106-3697
Telephone: 215.592.1500
Facsimile: 215.592.4663

CUNEO, GILBERT & LADUCA
Charles J. LaDuca, Atty.
Brendan S. Thompson
507 C Street NE
Washington, DC 20002

Tel: 202-789-3960
Fax: 202-789-1813

LOCKRIDGE, GRINDAL & NAUEN, P.L.L.P.
Robert J. Shelquist
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: 612.339.6900
Facsimile: 612.339.0981

AUDET & PARTNERS, LLP
Michael A. McShane
221 Main Street, Suite 1460
San Francisco, CA 94105
Telephone: 415.568.2555
Facsimile: 415.576.1776

ATTORNEYS FOR NAMED PLAINTIFFS

LR 83.15 DESIGNATION OF LOCAL COUNSEL

HALUNEN & ASSOCIATES
Michael A. Johnson
415 North LaSalle Street, Suite 502
Chicago, IL, 60610
Telephone: 312-222-0660
Facsimile: 312-222-1656

Attachment B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Debra Zanetti and Daniel Trongone, on behalf of themselves and others similarly situated, Plaintiffs, vs. IKO Manufacturing, Inc., a Delaware corporation, Defendant.	Civil File 09-cv-02017 (DRD/MAS) **AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiffs, on behalf of themselves and others similarly situated, by and through their undersigned counsel, file this Class Action Complaint, and in support thereof states and avers as follows:

NATURE OF ACTION

1. This is a consumer class action on behalf of all persons and entities who purchased IKO shingles manufactured or distributed by IKO under various trade names.

2. Defendant IKO Manufacturing, Inc. ("IKO") is a Delaware corporation that produces roofing shingles for sale nationwide.

3. IKO manufactured and marketed roofing shingle products sold under various brands and product names (hereinafter "Shingles").

4. The Shingles, which are composed of asphalt, natural fibers, filler and mineral granules have been marketed and warranted by Defendant as durable, and as offering long-lasting protection.

5. IKO manufactured, warranted, advertised and sold defective Shingles to tens of thousands of consumers throughout the United States.

6. Defendant failed to adequately design, formulate, and test the Shingles before warranting, advertising and selling them as durable and suitable roofing products.

7. Defendant warranted, advertised and sold to Plaintiffs and the Class Shingles that Defendant reasonably should have known were defectively designed, failed prematurely due to moisture invasion, cracking, curling, blistering, deteriorating, blowing off the roof and otherwise not performing in accordance with the reasonable expectations of Plaintiffs and the Class that such products be durable and suitable for use as roofing products. As a result, Plaintiffs and the Class have experienced continuous and progressive damage to their property.

8. Defendant's sales brochure stated that the Shingles were, among other things "[t]ime-tested and true" and "an excellent choice for exceptional roofing value."

9. IKO has consistently represented to consumers that it is "Setting the Standard" for "quality, durability, and innovation." Defendant has not lived up to that promise.

10. IKO markets its warranty as "IRON CLAD."

11. Plaintiffs' Shingles have begun to fail, are failing and will fail before the time periods advertised, marketed and guaranteed by IKO.

12. As a result, Plaintiffs and the Class have suffered actual damages in that the roofs on their homes, buildings and other structures have and will continue to fail prematurely, resulting in damage to the underlying structure and requiring them to expend thousands of dollars to repair the damages associated with the incorporation of the Shingles into their homes, buildings and other structures or to prevent such damage from occurring. Damage caused by the defective shingles has included, but is not limited to: damage to underlying felt, damage to structural roof components, damage to plaster and sheetrock, and damage to walls and ceiling structural components.

13. Because of the relatively small size of the typical individual Class member's claims, and because most homeowners or property owners have only modest resources, it is unlikely that individual Class members could afford to seek recovery against Defendant on their own. This is especially true in light of the size and resources of the Defendant. A class action is, therefore, the only reasonable means by which Class members can obtain relief from this Defendant.

14. The class Shingles suffer from a set of common defects, as described herein. Despite receiving a litany of complaints during the Class Period from consumers, such as Plaintiffs and the members of the Class, Defendant has refused to

effectively notify consumers of the defects, or repair the property damaged by the defects.

PARTIES

15. At all relevant times Plaintiff and class representative Debra Zanetti was a citizen of Wallington, New Jersey with an address of 184 Alden Street, Wallington, NJ 07057. Ms. Zanetti purchased a new home outfitted with IKO Shingles in approximately 1997. She first became aware of the problem with her shingles in approximately 2004 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before Plaintiff filed this Complaint.

16. At all relevant times Plaintiff and class representative Daniel Trongone was a citizen of Vineland, New Jersey with an address of 3285 Cornucopia Ave, Vineland, NJ 08361. Mr. Trongone purchased a new home outfitted with IKO Shingles in approximately 1996. He first became aware of the problem with his shingles in approximately 2006 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before Plaintiff filed this Complaint.

17. Defendant IKO Manufacturing is a Delaware corporation and operates a manufacturing plant in Wilmington, Delaware. IKO is a leading North American manufacturer of roofing materials. The company operates manufacturing plants in the United States, Canada, and Europe.

JURISDICTION AND VENUE

18. Defendant, IKO is a Delaware corporation that conducts substantial business in New Jersey, including the sale and distribution of the Shingles in New Jersey and has sufficient contacts with New Jersey or otherwise intentionally avails itself of the laws and markets of New Jersey, so as to sustain this Court's jurisdiction over Defendant.

19. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) in that Plaintiffs are class members and citizens of New Jersey. Class Members, as defined below, are all citizens of New Jersey. Defendant is a citizen of Delaware and the amount in controversy exceeds Five Million Dollars ($5,000,000.00).

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391, *et seq.* because a substantial part of the events or omissions giving rise to this claim occurred in the state of New Jersey. Additionally, venue is appropriate for the claims arising out of New Jersey's Consumer Fraud Act because the statute applies to any company engaging in any of the activities regulated by the Act within the State of New Jersey.

CLASS ALLEGATIONS

21. This action has been brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23, and case law thereunder on behalf of Plaintiffs and all others similarly situated, with the Class defined as follows:

> All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in the State of New Jersey on which IKO Shingles are or have been installed since 1979. IKO Shingles are defined to include without limitation all asphalt shingles manufactured or distributed by IKO. Excluded from the Class are Defendants, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

22. Members of the Class are so numerous that their individual joinder is impracticable. The proposed class contains hundreds and perhaps thousands of members. The precise number of Class members is unknown to Plaintiffs. However, upon information and belief, Plaintiffs believe it is well in excess of 1,000. The true number of Class members is likely to be known by Defendant, however, and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

23. There is a well-defined community of interest among members of the Class. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, and all Class members, own homes, residences, or other structures on which defective Shingles manufactured by Defendant have been installed. Those Shingles have failed, and will continue to fail, prematurely. The representative Plaintiffs, like all Class members, have been damaged by Defendant's conduct in that they have suffered damages as a result of the incorporation of the defective Shingles into their homes or structures.

Furthermore, the factual bases of Defendant's conduct are common to all Class members and represent a common thread of negligent conduct resulting in injury to all members of the Class.

24. There are numerous questions of law and fact common to Plaintiffs and the Class, and those questions predominate over any questions that may affect individual Class members, and include the following:

a. Whether the Shingles are defective in that they are subject to moisture penetration, cracking, curling, blistering, blowing off the roof, prematurely failing, and are not suitable for use as an exterior roofing product for the length of time advertised, marketed and warranted;

b. Whether Defendant should have known of the defective nature of the Shingles;

c. Whether Defendant owed a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture and marketing of the Shingles;

d. Whether Defendant breached its duty to Plaintiffs and the Class by designing, manufacturing, advertising and selling to Plaintiffs and the Class defective Shingles and by failing promptly to remove the Shingles from the marketplace or take other appropriate remedial action;

e. Whether the Shingles failed to perform in accordance with the reasonable expectations of ordinary consumers;

f. Whether the benefits of the design of the Shingles do not outweigh the risk of their failure;

g. Whether the Shingles fail to perform as advertised and warranted;

h. Whether Plaintiffs and the Class are entitled to compensatory damages, and the amount of such damages; and

i. Whether Defendant should be declared financially responsible for notifying all Class members of their detective Shingles and for all damages associated with the incorporation of such Shingles into Class Members' homes, residences, buildings and other structures.

25. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting statewide, multistate and national consumer class actions, actions involving defective products, and, specifically, actions involving defective construction materials. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class they represent, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the Class.

26. Plaintiffs and the members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendant's conduct. A class action is

superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the vast majority of the Class members likely would find the cost of litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class member's claims, it is likely that only a few Class members could afford to seek legal redress for Defendant's conduct. Further, the cost of litigation could well equal or exceed any recovery.

27. Absent a class action, Class members will continue to incur damages without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment would conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

28. Defendant is estopped from relying on any statutes of limitation by virtue of its acts of fraudulent concealment, which include Defendant's intentional concealment from Plaintiffs and the general public that their shingles were defective, while continually marketing the Shingles as dependable products that would last for decades. Defendant's acts of fraudulent concealment include failing to disclose that its Shingles were defectively manufactured and would deteriorate in less than half their expected lifetime, leading to damage to the very structures

they were purchased to protect. Through such acts Defendant was able to conceal from the public the truth concerning their product.

29. Until shortly before Plaintiffs filed their original complaint, Plaintiffs had no knowledge that the IKO Shingles they purchased were defective and unreliable. Plaintiffs had no reasonable way to discover the defects until shortly before Plaintiffs filed their original complaint.

30. Defendant had a duty to disclose that its Shingles were defective, unreliable and inherently flawed in their design or manufacturer.

FIRST CAUSE OF ACTION
(Negligence)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

31. Defendant had a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Shingles.

32. Defendant breached its duty to Plaintiffs and the Class by designing, manufacturing, advertising and selling to Plaintiffs and the Class a product that is defective and will fail prematurely, and by failing to promptly remove the Shingles from the marketplace or to take other appropriate remedial action.

33. Defendant knew or should have known that the Shingles were defective, would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not as warranted and represented by Defendant.

34. As a direct and proximate cause of Defendant's negligence, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes, residences, buildings and other structures an exterior roofing product that is defective and that fails prematurely due to moisture penetration. These failures have caused and will continue to cause Plaintiffs and the Class to incur expenses repairing or replacing their roofs as well as the resultant, progressive property damage.

35. Plaintiffs on behalf of themselves and all others similarly situated, demand judgment against Defendant for compensatory damages for themselves and each member of the Class, for establishment of a common fund, plus attorney's fees, interest and costs.

SECOND CAUSE OF ACTION
(Strict Products Liability)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

36. At all relevant times, Defendant was engaged in the business of manufacturing the Shingles which are the subject of this action.

37. The Shingles were expected to and did reach Plaintiffs and the Class without substantial change to the condition in which they were manufactured and sold by Defendant.

38. The Shingles installed on Plaintiffs' and the Class Members' properties were and are defective and unfit for their intended use. The use of the Shingles has caused and will continue to cause property damage to Plaintiffs and the Class.

39. Defendant's Shingles fail to perform in accordance with the reasonable expectations of Plaintiffs, the Class, and ordinary consumers, and the benefits of the design of the Shingles do not outweigh the risk of their failure.

40. By reason of the foregoing, Defendant is strictly liable to Plaintiffs and the Class.

41. Plaintiffs on behalf of themselves and all other similarly situated, demand judgment against Defendant for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest and costs.

THIRD CAUSE OF ACTION
(Breach of Express Warranty)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraph of this Complaint.

42. Defendant marketed and sold its Shingles into the stream of commerce with the intent that the Shingles would be purchased by Plaintiffs and members of the Class.

43. Defendant expressly warranted that its Shingles are permanent, impact resistant, and would maintain their structural integrity. Defendant's representatives through its written warranties regarding the durability of, and the quality of the Shingles created express warranties which became part of the basis of the bargain Plaintiffs and members of the Class entered into when they purchased the Shingles.

44. Defendant expressly warranted that the structural integrity of the Shingles purchased by Plaintiffs and Class members would last at least 20 years and as long as a lifetime.

45. Defendant breached its express warranties to Plaintiffs and the Class in that Defendant's Shingles are neither permanent nor impact resistant and did not, and do not, maintain their structural integrity and perform as promised. Defendant's Shingles crack, split, curl, warp, discolor, delaminate, blow off the roof, deteriorate prematurely, and they otherwise do not perform as warranted by Defendant, and they have caused or are causing damage to the underlying roof elements, structures or interiors of Plaintiffs' and Class members' homes, residences, buildings, and structures.

46. Defendant's warranties fail their essential purpose because they purport to warrant that the Shingles will be free from structural breakdown for as much as long as a lifetime when, in fact, Defendant's Shingles fail far short of the applicable warranty period.

47. Moreover, because the warranties limit Plaintiffs' and Class members' recovery to replacement of the Shingles piece by piece, with replacement labor not included, Defendant's warranties are woefully inadequate to repair and replace failed roofing, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the IKO Shingles. The remedies available in Defendant's warranties are limited to such an extent that they do not provide a minimum adequate remedy.

48. The limitations on remedies and the exclusions in Defendant's warranties are unconscionable and unenforceable.

49. Defendant has denied or failed to pay in full the warranty claims.

50. As a result of Defendant's breach of its express warranties, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes and other structures an exterior roofing product that is defective and that has failed or is failing prematurely due to moisture penetration. This failure has required or is requiring Plaintiffs and the Class to incur significant expense in repairing or replacing their roofs. Replacement is required to prevent on-going and future

damage to the underlying roof elements, structures or interiors of Plaintiffs' and Class members' homes and structures.

51. Plaintiffs on behalf of themselves and all others similarly situated, demand judgment against Defendant for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest and costs.

FOURTH CAUSE OF ACTION
(Breach of Implied Warranty)

Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

52. At all times mentioned herein, Defendant manufactured or supplied IKO Shingles, and prior to the time it was purchased by Plaintiffs, Defendant impliedly warranted to Plaintiffs, and to Plaintiffs' agents, that the product was of merchantable qualify and fit for the use for which it was intended.

53. Plaintiffs and Plaintiffs' agents relied on the skill and judgment of the Defendant in using the aforesaid product.

54. The Product was unfit for its intended use and it was not of merchantable quality, as warranted by Defendant in that it had propensities to break down and fail to perform and protect when put to its intended use. The aforesaid product did cause Plaintiffs to sustain damages as herein alleged.

55. After Plaintiffs was made aware of Plaintiffs's damages as a result of the aforesaid product, notice was duly given to Defendant of the breach of said warranty.

56. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class members suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Violation of Consumer Fraud Act)

Plaintiffs incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

57. Defendant is a manufacturer, marketer, seller or distributor of the Shingles.

58. The conduct described above and throughout this Complaint took place within the State of New Jersey and constitutes unfair business practices in violation of New Jersey's Consumer Fraud Act N.J. Rev. Stat. § 56:8-1 et seq. (2008) (hereinafter, "CFA").

59. The CFA applies to the claims of all the Class members because the conduct which constitutes violations of the CFA by the Defendant occurred within the State of New Jersey.

60. In violation of the CFA, Defendant employed fraud, deception, false promise, misrepresentation and the knowing concealment, suppression, or omission of material facts in their sale and advertisement of Shingles in the State of New Jersey.

61. The omissions described herein were likely to deceive consumers into purchasing the Shingles.

62. As a direct and proximate cause of the violation of the CFA, described above, Plaintiffs and members of the Class have been injured in that they have purchased the defective Shingles based on nondisclosure of material facts alleged above.

63. Defendant knew or should have known that the Shingles were defective, would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not as warranted and represented by Defendant.

64. Defendant used unfair methods of competition and unfair or deceptive acts or practices in conducting its business. This conduct constitutes fraud within meaning of the CFA. This unlawful conduct is continuing, with no indication that Defendant will cease.

65. Defendant's actions and connection with the manufacturing and distributing of the Shingles as set forth herein evidences a lack of good faith, honesty in fact and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of the State of New Jersey Consumer Fraud Act, N.J. Rev. Stat § 56:8-1, et seq.

66. Defendant acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when it committed these acts of consumer fraud.

67. As a direct and proximate result of Defendant's unfair and deceptive acts and practices, Plaintiffs and the other members of the Class will suffer damages, which include, without limitation, cost to inspect, repair or replace their Shingles and other property in an amount to be determined at trial.

68. As a result of the acts of consumer fraud described above, Plaintiffs and the Class have suffered ascertainable loss-actual damages that include the purchase price of the products for which Defendant is liable to the Plaintiffs and the Class for treble their ascertainable losses, plus attorneys' fees and costs, along with equitable relief prayed for herein in this Complaint.

SIXTH CAUSE OF ACTION
(Fraudulent Concealment)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

69. At all times mentioned herein, Defendant had the duty and obligation to disclose to Plaintiffs the true facts concerning the IKO Shingles, that said product was defective and unreliable. Defendant made the affirmative representations as set forth above to Plaintiffs, the Class and the general public prior to the date Plaintiffs purchased the IKO Shingles while concealing the material described herein.

70. At all times mentioned herein, Defendant had the duty and obligation to disclose to Plaintiffs the true facts concerning the IKO Shingles, that is that IKO Shingles

were defective, would prematurely fail, and otherwise were not as warranted and represented by Defendant.

71. At all times mentioned herein, Defendant intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiffs and with the intent to defraud as herein alleged.

72. At all times mentioned herein, Plaintiffs and members of the Class were not aware of the facts set forth above and had they been aware of said facts, they would not have acted as they did, that is, would not have purchased IKO Shingles.

73. As a result of the concealment or suppression of the facts set forth above, Plaintiffs and the Class members sustained damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Breach of Contract)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

74. Plaintiffs and the Class members have entered into certain contracts and warranty agreements with Defendant, including an express warranty. Pursuant to these contracts and agreements, including the express warranty, Defendant would provide Plaintiffs and the Class members with Shingles that were of merchantable quality and fit for the use for which they were intended. Defendant was further

obligated pursuant to the express warranty to repair or replace any defects or problems with the Shingles that Plaintiffs and the Class members experienced. In exchange for these duties and obligations, Defendant received payment of the purchase price for these Shingles from Plaintiffs and the Class.

75. Plaintiffs and the Class satisfied their obligations under these contracts, warranties and agreements.

76. Defendant failed to perform as required by the express warranty and breached said contracts and agreements because it provided Plaintiffs and the Class with Shingles that are defective and unfit for their intended use and failed to appropriately repair or replace the Shingles.

77. As a result of the foregoing, Plaintiffs and the Class members are entitled to compensatory damages in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
(Unjust Enrichment)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

78. Substantial benefits have been conferred on Defendant by Plaintiffs and the Class and Defendant have appreciated these benefits.

79. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable for Defendant to retain the benefit without payment of the value to the Plaintiffs and the Class.

80. Defendant, by the deliberate and fraudulent conduct complained of herein, has been unjustly enriched in a manner that warrants restitution.

81. As a proximate consequence of Defendant's improper conduct, the Plaintiffs and the Class members were injured. Defendant has been unjustly enriched, and in equity, should not be allowed to obtain this benefit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request of this Court the following relief, on behalf of themselves and all others similarly situated:

a. For an Order certifying the Plaintiffs' Class, appointing Plaintiffs as Class Representatives, and appointing the undersigned counsel of record as Class counsel;

b. Equitable and injunctive relief enjoining Defendant from pursuing the policies, acts, and practices described in this Complaint;

c. For damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;

d. Pre-judgment and post-judgment interest at the maximum rate allowable at law;

e. The costs and disbursements incurred by Plaintiffs and their counsel in connection with this action, including reasonable attorneys' fees; and

f. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and the members of the Class hereby demand trial by jury on all issues so triable.

Dated: June 1, 2009

LEVIN, FISHBEIN & BERMAN

/s/ Michael Weinkowitz
Michael Weinkowitz, Atty. No. 76033
Charles Schaffer, Atty. No. 76259
Arnold Levin
510 Walnut Street - Suite 500
Philadelphia, PA 19106-3697
Telephone: 215.592.1500
Facsimile: 215.592.4663

HALUNEN & ASSOCIATES
Clayton D. Halunen
Shawn J. Wanta
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: 612.605.4098
Facsimile: 612.605.4099

LOCKRIDGE, GRINDAL & NAUEN,P.L.L.P.
Robert J. Shelquist
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: 612.339.6900
Facsimile: 612.339.0981

ALEXANDER, HAWES & AUDET, LLP
Michael A. McShane
Jason T. Baker
221 Main Street, Suite 1460
San Francisco, CA 94105
Telephone: 415.982.1776
Facsimile: 415.576.1776

Attachment C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

GERALD P. CZUBA, CURTIS CZAJKA, and RICHARD PELECKIS, individually and on behalf of a Class of others similarly situated, Plaintiffs, v. IKO MANUFACTURING, INC., a Delaware Corporation, IKO INDUSTRIES, LTD., a Canadian corporation, IKO SALES, LTD., a Canadian corporation, IKO PACIFIC, INC., a Washington corporation, and IKO CHICAGO, INC. an Illinois corporation, Defendants.	Case No. 09-cv-0409 (WMS) **AMENDED COMPLAINT** **JURY TRIAL DEMANDED**

INTRODUCTION

1. This is a putative class action on behalf of Gerald P. Czuba, Curtis Czajka, and Richard Peleckis (the "Plaintiffs") and a class of all others similarly situated against IKO Manufacturing, Inc. (the "IKO"), the manufacturer of various asphalt and natural fiber shingles (the "Shingles").

2. In stark contrast to IKO's glowing representations and warranties concerning their shingles, the product is severely defective. Yet IKO continues to sell it to the public and continue to make their false representations and warranties, despite

the fact that the product is a ticking time-bomb that will eventually cause consumers massive property damage and substantial removal and replacement costs.

3. This class action seeks damages, punitive damages, injunctive relief, costs, attorneys' fees, and other relief as a result of IKO's willful, wanton, reckless, and/or grossly negligent conduct in causing consumers' homes to be in a dangerous, defective, unsafe, and unfit condition for habitation.

FACTUAL ALLEGATIONS

4. This is a consumer class action on behalf of all persons and entities who purchased IKO shingles manufactured or distributed by IKO under various trade names.

5. Defendants produce roofing shingles for sale nationwide. Defendants manufactured and marketed roofing shingle products sold under various brands and product names. The Shingles, which are composed of asphalt, natural fibers, filler and mineral granules have been marketed and warranted by Defendants as durable, and as offering long-lasting protection.

6. Defendants manufactured, warranted, advertised, and sold defective Shingles to tens of thousands of consumers throughout the United States. Defendants failed to adequately design, formulate, and test the Shingles before warranting, advertising, and selling them as durable and suitable roofing products. Defendants warranted, advertised, and sold to Plaintiffs and the Class, Shingles

that Defendants reasonably should have known were defectively designed, failed prematurely due to moisture invasion, cracking, curling, blistering, deteriorating, blowing off the roof, and otherwise not performing in accordance with the reasonable expectations of Plaintiffs and the Class that such products be durable and suitable for use as roofing products. As a result, Plaintiffs and the Class have experienced continuous and progressive damage to their property.

7. Defendants' sales brochure stated that the Shingles were, among other things "[t]ime-tested and true" and "an excellent choice for exceptional roofing value."

8. Defedants have consistently represented to consumers that it is "Setting the Standard" for "quality, durability, and innovation." Defendants have not lived up to that promise.

9. Defendants market their warranty as "IRON CLAD."

10. Plaintiffs' Shingles have begun to fail, are failing, and will fail before the time periods advertised, marketed and guaranteed by Defendants.

11. As a result, Plaintiffs and the Class have suffered actual damages in that the roofs on their homes, buildings, and other structures have and will continue to fail prematurely, resulting in damage to the underlying structure and requiring them to expend thousands of dollars to repair the damages associated with the incorporation of the Shingles into their homes, buildings, and other structures, or to prevent such damage from occurring. Damage caused by the defective

shingles has included, but is not limited to: damage to underlying felt; damage to structural roof components, damage to plaster and sheetrock, and damage to walls and ceiling structural components.

12. Because of the relatively small size of the typical individual Class member's claims, and because most homeowners or property owners have only modest resources, it is unlikely that individual Class members could afford to seek recovery against Defendants on their own. This is especially true in light of the size and resources of the Defendants. A class action is, therefore, the only reasonable means by which Class members can obtain relief from these Defendants.

13. The class Shingles suffer from a set of common defects, as described herein. Despite receiving a litany of complaints during the Class Period from consumers, such as Plaintiffs and the members of the Class, Defendants have refused to effectively notify consumers of the defects, or repair the property damaged by the defects.

PARTIES

14. At all relevant times Plaintiff and class representative Gerald P. Czuba was a citizen of Elma, New York, with an address of 1370 Bullis Road, Elma, New York 14059. Mr. Czuba purchased a new home outfitted with IKO Shingles in approximately 1997. He first became aware of the problem with his shingles in

approximately 2006 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before he filed this Complaint.

15. At all relevant times Plaintiff and class representative Curtis Czajka was a citizen of Ripley, New York, with an address of 9464 E Lake Road, Ripley, New York 14775. Mr. Czajka purchased a new home outfitted with IKO Shingles in approximately 1991. He first became aware of the problem with his shingles in approximately 2005 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before he filed this Complaint.

16. At all relevant times Plaintiff and class representative Richard Peleckis was a citizen of Orchard Park, New York, with an address of 4640 Brompton Drive, Orchard Park, New York 14219. Mr. Peleckis purchased a new home outfitted with IKO Shingles in approximately 1997. He first became aware of the problem with his shingles in approximately 2006 and Plaintiff had no reasonable way to discover that the Shingles were defective until shortly before he filed this Complaint.

17. Defendant, IKO Manufacturing Inc., is a Delaware corporation and operates a manufacturing plant located at 120 Hay Road, Wilmington, Delaware. IKO is a leading North American manufacturer of roofing materials. The company operates manufacturing plants in the United States, Canada, and Europe.

18. Defendant IKO Industries, Ltd. is a leading North American manufacturer and distributor of roofing materials and the parent company of Defendants IKO Manufacturing. The company is located at 71 Orenda Rd, Brampton, ON, L6W 1V8, Canada. IKO Industries, Ltd. is the owner of several patents that may apply to the Shingles manufactured by IKO Manufacturing. The company operates manufacturing plants in the United States, Canada, and Europe.

19. Defendant IKO Sales, Ltd. is a leading North American manufacturer and distributor of roofing materials and the parent company of Defendants IKO Manufacturing and IKO Industries, Ltd. The company is located at 1600 42 Ave. SE, Calgary, AB, TG2 5B5, Canada. The company owns and operates manufacturing plants in the United States, Canada, and Europe.

20. Defendant IKO Pacific, Inc. is a Washington corporation with significant business operations located at 850 W. Front St, Sumas, Washington. IKO Pacific, Inc. manufactures, distributes, and sells Shingles throughout the United States.

21. Defendant IKO Chicago, Inc. is an Illinois corporation with significant business operations located at 235 W South Tec Dr, Kankakee, Illinois. IKO Chicago, Inc. manufactures, distributes, and sells Shingles throughout the United States.

JURISDICTION AND VENUE

22. Defendants conduct substantial business in New York, including the sale and distribution of the Shingles in New York and has sufficient contacts with New York or otherwise intentionally avails itself of the laws and markets of New York, so as to sustain this Court's jurisdiction over Defendant.

23. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) in that Plaintiffs are class members and citizens of New York. Class Members, as defined below, are all citizens of New York. Defendants are citizens of Delaware, Illinois, Washington, or Canada; and the amount in controversy exceeds Five Million Dollars ($5,000,000.00).

24. Venue is proper in this district pursuant to 28 U.S.C. § 1391, *et seq.* because a substantial part of the events or omissions giving rise to this claim occurred in the state of New York.

CLASS ALLEGATIONS

25. This action has been brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23 and case law thereunder, on behalf of Plaintiffs and all others similarly situated, with the Class defined as follows:

> All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures, physically located in the State of New York, on which IKO Shingles are or have been installed since 1979. IKO Shingles are defined to include without limitation all fiberglass-based asphalt shingles manufactured or distributed by IKO. Excluded from

> the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

26. Members of the Class are so numerous that their individual joinder is impracticable. The proposed class contains hundreds and perhaps thousands of members. The precise number of Class members is unknown to Plaintiffs. However, upon information and belief, Plaintiffs believe it is well in excess of 1,000. The true number of Class members is likely to be known by Defendants, and thus may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

27. There is a well-defined community of interest among members of the Class. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, and all Class members, own homes, residences, or other structures on which defective Shingles manufactured by Defendants have been installed. Those Shingles have failed, and will continue to fail, prematurely. The representative Plaintiffs, like all Class members, have been damaged by Defendants' conduct in that they have suffered damages as a result of the incorporation of the defective Shingles into their homes or structures. Furthermore, the factual bases of Defendants' conduct are common to all Class members and represent a common thread of negligent conduct resulting in injury to all members of the Class.

28. There are numerous questions of law and fact common to Plaintiffs and the Class, and those questions predominate over any questions that may affect individual Class members, and include the following:

a. Whether the Shingles are defective in that they are subject to moisture penetration, cracking, curling, blistering, blowing off the roof, prematurely fail, and are not suitable for use as an exterior roofing product for the length of time advertised, marketed, and warranted;

b. Whether Defendants should have known of the defective nature of the Shingles;

c. Whether Defendants owed a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Shingles;

d. Whether Defendants breached their duty to Plaintiffs and the Class by designing, manufacturing, advertising, and selling to Plaintiffs and the Class, defective Shingles and by failing promptly to remove the Shingles from the marketplace or take other appropriate remedial action;

e. Whether the Shingles failed to perform in accordance with the reasonable expectations of ordinary consumers;

f. Whether the benefits of the design of the Shingles do not outweigh the risk of their failure;

g. Whether the Shingles fail to perform as advertised and warranted;

h. Whether Plaintiffs and the Class are entitled to compensatory damages, and the amount of such damages; and

i. Whether Defendants should be declared financially responsible for notifying all Class members of their detective Shingles and for all damages associated with the incorporation of such Shingles into Class Members' homes, residences, buildings and other structures.

29. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs has retained counsel with substantial experience in prosecuting statewide, multistate and national consumer class actions, actions involving defective products, and, specifically, actions involving defective construction materials. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class they represent, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the Class.

30. Plaintiffs and the members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendants' conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the vast majority of the Class members likely would find the cost of litigating their claims to be prohibitive and would have no effective remedy at law. Because of the relatively small size of the individual

Class member's claims, it is likely that only a few Class members could afford to seek legal redress for Defendants' conduct. Further, the cost of litigation could well equal or exceed any recovery. Absent a class action, Class members will continue to incur damages without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment would conserve the resources of the courts and the litigants, and would promote consistency and efficiency of adjudication.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

31. Defendants are estopped from relying on any statutes of limitation by virtue of its acts of fraudulent concealment, which include Defendants' intentional concealment from Plaintiffs and the general public that their shingles were defective, while continually marketing the Shingles as dependable products that would last for decades. Defendants' acts of fraudulent concealment include failing to disclose that its Shingles were defectively manufactured and would deteriorate in less than half their expected lifetime, leading to damage to the very structures they were purchased to protect. Through such acts Defendants were able to conceal from the public the truth concerning their product.

32. Until shortly before Plaintiffs filed the original complaint, Plaintiffs had no knowledge that the IKO Shingles they purchased were defective and unreliable.

33. Defendants had a duty to disclose that their Shingles were defective, unreliable and inherently flawed in their design and/or manufacturer.

FIRST CAUSE OF ACTION
(Negligence)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

34. Defendants had a duty to Plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Shingles.

35. Defendants breached their duty to Plaintiffs and the Class by designing, manufacturing, advertising, and selling to Plaintiffs and the Class, a product that is defective and will fail prematurely, and by failing to promptly remove the Shingles from the marketplace or to take other appropriate remedial action.

36. Defendants knew or should have known that the Shingles were defective, would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not as warranted and represented by Defendants.

37. As a direct and proximate cause of Defendants' negligence, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes, residences, buildings, and other structures an exterior roofing product that is defective and that fails prematurely due to moisture penetration. These failures have caused and will continue to cause Plaintiffs and the Class to incur expenses repairing or replacing their roofs as well as the resultant, progressive property damage.

38. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for establishment of a common fund, plus attorney's fees, interest, and costs.

SECOND CAUSE OF ACTION
(Strict Products Liability)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

39. At all relevant times, Defendants were engaged in the business of manufacturing the Shingles which are the subject of this action.

40. The Shingles were expected to and did reach Plaintiffs and the Class without substantial change to the condition in which they were manufactured and sold by Defendants.

41. The Shingles installed on Plaintiffs' and the Class Members' properties were and are defective and unfit for their intended use. The use of the Shingles has caused and will continue to cause property damage to Plaintiffs and the Class.

42. Defendants' Shingles fail to perform in accordance with the reasonable expectations of Plaintiffs, the Class, and ordinary consumers.

43. Benefits of the design of the Shingles do not outweigh the risk of their failure.

44. By reason of the foregoing, Defendants are strictly liable to Plaintiffs and the Class.

45. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest, and costs.

THIRD CAUSE OF ACTION
(Breach of Express Warranty)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraph of this Complaint.

46. Defendants marketed and sold their Shingles into the stream of commerce with the intent that the Shingles would be purchased by Plaintiffs and members of the Class.

47. Defendants expressly warranted that their Shingles were permanent, impact resistant, and would maintain their structural integrity. Defendants' representatives, through their written warranties regarding the durability and quality of the Shingles, created express warranties which became part of the basis of the bargain Plaintiffs and members of the Class entered into when they purchased the Shingles.

48. Defendants expressly warranted that the structural integrity of the Shingles purchased by Plaintiffs and Class members would last at least 20 years and as long as a lifetime.

49. Defendants breached their express warranties to Plaintiffs and the Class in that Defendants' Shingles are neither permanent nor impact resistant and did not, and do not, maintain their structural integrity and perform as promised. Defendants' Shingles crack, split, curl, warp, discolor, delaminate, blow off the roof, deteriorate prematurely, and otherwise do not perform as warranted by Defendants. The Shingles have caused or are causing damage to the underlying roof elements, structures or interiors of Plaintiffs' and Class members' homes, residences, buildings, and structures.

50. Defendants' warranties fail their essential purpose because they purport to warrant that the Shingles will be free from structural breakdown for as much as long as a lifetime when, in fact, Defendants' Shingles fail far short of the applicable warranty period.

51. Moreover, because the warranties limit Plaintiffs' and Class members' recovery to replacement of the Shingles piece by piece, with replacement labor not included, Defendants' warranties are woefully inadequate to repair and replace failed roofing, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the IKO Shingles. The remedies available

in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

52. The limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

53. Defendants have denied or failed to pay in full the warranty claims.

54. As a result of Defendants' breach of its express warranties, Plaintiffs and the Class have suffered actual damages in that they purchased and installed on their homes and other structures, an exterior roofing product that is defective and that has failed or is failing prematurely due to moisture penetration. This failure has required or is requiring Plaintiffs and the Class to incur significant expense in repairing or replacing their roofs. Replacement is required to prevent on-going and future damage to the underlying roof elements, structures, or interiors of Plaintiffs' and Class members' homes and structures.

55. Plaintiffs on behalf of themselves and all others similarly situated, demand judgment against Defendants for compensatory damages for themselves and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest, and costs.

FOURTH CAUSE OF ACTION
(Breach of Implied Warranty)

Plaintiffs incorporate by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

56. At all times mentioned herein, Defendants manufactured or supplied IKO Shingles, and prior to the time it was purchased by Plaintiffs, Defendants impliedly warranted to Plaintiffs, and to Plaintiffs' agents, that the product was of merchantable quality and fit for the use for which it was intended.

57. Plaintiffs and Plaintiffs' agents relied on the skill and judgment of the Defendant in using the Shingles.

58. The product was unfit for its intended use and it was not of merchantable quality, as warranted by Defendant in that it had propensities to break down and fail to perform and protect when put to its intended use. The Shingles did cause Plaintiffs to sustain damages as herein alleged.

59. After Plaintiffs were made aware of Plaintiffs' damages as a result of the Shingles, notice was duly given to Defendants of the breach of said warranty.

60. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class members suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Violation of New York Consumer Protection From Deceptive Acts and Practices Laws)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

61. The conduct described in this Complaint constitutes a violation of N.Y. Gen. Bus. § 349(a), and §349(h).

62. Plaintiffs and members of the Class have been injured as a result of the statutory violations, including misrepresentations and deceptions, described in this Complaint as a result of being induced thereby to purchase IKO Shingles.

63. As a result of these statutory violations of law, Plaintiffs and the members of the Class are entitled to receive equitable relief in such form as the Court may deem appropriate to correct or prevent such misconduct and remedy their injuries (including but not limited to, injunctive relief, equitable restitution, accounting, and other relief), damages, as well as costs and attorney's fees pursuant to N.Y. Gen. Bus. §349(h).

SIXTH CAUSE OF ACTION
(Fraudulent Concealment)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

64. At all times mentioned herein, Defendants had the duty and obligation to disclose to Plaintiffs the true facts concerning the IKO Shingles; that is that said product was defective and unreliable. Defendants made the affirmative representations as set forth above to Plaintiffs, the Class, and the general public, prior to the date Plaintiffs purchased the IKO Shingles while concealing the material described herein.

65. At all times mentioned herein, Defendants had the duty and obligation to disclose to Plaintiffs the true facts concerning the IKO Shingles, that is that IKO Shingles were defective, would prematurely fail, and otherwise were not as warranted and represented by Defendants.

66. At all times mentioned herein, Defendants intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiffs, with the intent to defraud as herein alleged.

67. At all times mentioned herein, Plaintiffs and members of the Class were not aware of the facts set forth above and had they been aware of said facts, they would not have acted as they did, that is, would not have purchased IKO Shingles.

68. As a result of the concealment or suppression of the facts set forth above, Plaintiffs and the Class members sustained damages in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Breach of Contract)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

69. Plaintiffs and the Class members have entered into certain contracts and warranty agreements with Defendants, including an express warranty. Pursuant to these

contracts and agreements, including the express warranty, Defendants would provide Plaintiffs and the Class members with Shingles that were of merchantable quality and fit for the use for which they were intended. Defendants were further obligated pursuant to the express warranty to repair or replace any defects or problems with the Shingles that Plaintiffs and the Class members experienced. In exchange for these duties and obligations, Defendants received payment of the purchase price for these Shingles from Plaintiffs and the Class.

70. Plaintiffs and the Class satisfied their obligations under these contracts, warranties, and agreements.

71. Defendants failed to perform as required by the express warranty and breached said contracts and agreements because they provided Plaintiffs and the Class with Shingles that were defective and unfit for their intended use and failed to appropriately repair or replace the Shingles.

72. As a result of the foregoing, Plaintiffs and the Class members are entitled to compensatory damages in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION
(Unjust Enrichment)

Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

73. Substantial benefits have been conferred on Defendants by Plaintiffs and the Class and Defendants have appreciated these benefits.

74. Defendants' acceptance and retention of these benefits under the circumstances make it inequitable for Defendants to retain the benefit without payment of the value to the Plaintiffs and the Class.

75. Defendants, by the deliberate and fraudulent conduct complained of herein, have been unjustly enriched in a manner that warrants restitution.

76. As a proximate consequence of Defendants' improper conduct, the Plaintiffs and the Class members were injured. Defendants have been unjustly enriched, and in equity, should not be allowed to obtain this benefit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request of this Court the following relief, on behalf of themselves and all others similarly situated:

a. For an Order certifying the Plaintiffs' Class, appointing Plaintiffs as Class Representatives, and appointing the undersigned counsel of record as Class counsel;

b. Equitable and injunctive relief enjoining Defendants from pursuing the policies, acts, and practices described in this Complaint;

c. For damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;

d. Pre-judgment and post-judgment interest at the maximum rate allowable at law;

e. The costs and disbursements incurred by Plaintiffs and his counsel in connection with this action, including reasonable attorneys' fees; and

f. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and the members of the Class, hereby demand trial by jury on all issues so triable.

Dated: June 25, 2009

CUNEO GILBERT & LADUCA, LLP

/s/ Charles J. LaDuca

Charles J. LaDuca, Atty., No. 3975927
Brendan S. Thompson
507 C Street NE
Washington, DC 20002
Tel: 202-789-3960
Fax: 202-789-1813

LAW OFFICES OF DAVID G. JAY
David G. Jay
69 Delaware Avenue, Suite 1103
Buffalo, New York 14202
Tel: 716-856-6300

HALUNEN & ASSOCIATES
Clayton D. Halunen
Shawn J. Wanta
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Tel: 612-605-4098
Fax: 612-605-4099

LOCKRIDGE, GRINDAL & NAUEN, P.L.L.P.
Robert J. Shelquist
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: 612-339-6900
Fax: 612-339-0981

LEVIN, FISHBEIN & BERMAN

Charles Schaffer
Arnold Levin
510 Walnut Street - Suite 500
Philadelphia, PA 19106-3697
Tel: 215-592-1500
Fax: 215-592-4663

AUDET & PARTNERS, LLP
Michael A. McShane
221 Main Street, Suite 1460
San Francisco, CA 94105
Tel: 415-568-2555
Fax: 415-576-1776

CERTIFICATE OF SERVICE

I, Charles J. LaDuca, Esq. hereby certify and affirm that on the 25th day of June, 2009, I electronically filed the foregoing Amended Complaint with the Clerk of the United States District Court for the Western District of New York using its CM/ECF system, which would then electronically notify the following CM/ECF participants of this filing:

Joseph W. Dunbar, Esq.
DAMON & MOREY, LLP
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202
Telephone: (716) 856-5500
jdunbar@damonmorey.com

I further certify and affirm that I have mailed the foregoing via post-paid first class mail, to the following non-CM/ECF participants:

Nathan P. Eimer, Esq.
Andrew G. Klevorn, Esq.
John K. Theis, Esq.
EIMER STAHL KELVORN
& SOLBERG, L.L.P.
224 South Michigan, Suite 1100
Chicago, Illinois 60604
(312) 660-7600; (312) 692-1718 fax

/s/ Charles J. LaDuca

Charles J. LaDuca

Attachment D

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL HIGHT and MICHAEL AUGUSTINE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

IKO MANUFACTURING, INC., a Delaware corporation; IKO INDUSTRIES, LTD., a Canadian corporation; IKO SALES, LTD., a Canadian corporation; IKO PACIFIC, INC., a Washington corporation; and IKO CHICAGO, INC., an Illinois corporation,

Defendants.

NO.

COMPLAINT – CLASS ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION

JURY DEMAND

I. INTRODUCTION

1.1 Plaintiffs, Michael Hight and Michael Augustine (hereinafter Plaintiffs), bring this action on their behalf and on behalf of all similarly situated individuals and entities who own or owned homes, residences, buildings or other structures on which asphalt roofing shingles manufactured and distributed under various trade names by IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Sales, Ltd., IKO Pacific, Inc., or IKO Chicago, Inc. (collectively "IKO" or "Defendant") were installed (the "Class").

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

1.2 The asphalt shingles manufactured and sold by IKO (the "Shingles"), are defectively designed and manufactured such that they fail prematurely causing damage to the property of Plaintiffs and members of the Class and forcing them to repair or replace their roofs sooner than reasonably expected.

1.3 Plaintiffs seek to recover, for themselves and the Class, the costs of repairing the damage to their property and replacing their roofs, or injunctive relief forcing IKO to replace their defective roofs.

II. PARTIES

A. Plaintiffs

2.1 Plaintiff Michael Hight is a citizen of Bluffton, Ohio with an address of 107 Matterhorn Drive, Bluffton, Ohio, 45817. Mr. Hight purchased a new home outfitted with IKO Shingles in approximately 1998. He first became aware of the problem with his shingles in approximately 2009 when he noticed his shingles cracking and otherwise failing. He had no reasonable way to discover the Shingles were defective until shortly before filing this Complaint. Hight complained to IKO but IKO refused to provide him any relief.

2.2 Plaintiff Michael Augustine is a citizen of Johnson City, New York with an address of 44 Louise Street, Johnson City, NY 13780. Mr. Augustine purchased IKO Shingles in approximately 1996. He first became aware of the problem with his shingles in approximately 2008 when he notice many of the shingles had curled or buckled and in some places all the aggregate was completely gone. A roofing contractor advised Augustine the roof was worn out in its entirety. Augustine had no reasonable way to discover that the Shingles were defective until shortly before filing this Complaint. Augustine complained to IKO but IKO refused to provide him complete relief.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

B. Defendants

2.3 Defendant IKO Manufacturing, Inc. is a Delaware corporation with significant business operations in Sumas, Whatcom County, Washington, where it conducts business as IKO Pacific, Inc.

2.4 Defendant IKO Industries, Ltd. is a leading North American manufacturer and distributor of roofing materials and the parent company of Defendant IKO Manufacturing. IKO Industries, Ltd. is the owner of several patents that may apply to the Shingles manufactured by IKO Manufacturing. The company operates manufacturing plants in the United States, Canada, and Europe.

2.5 Defendant IKO Sales, Ltd. is a leading North American manufacturer and distributor of roofing materials and the parent company of Defendants IKO Manufacturing and IKO Industries, Ltd. The company owns and operates manufacturing plants in the United States, Canada, and Europe.

2.6 Defendant IKO Pacific, Inc. is a Washington corporation with significant business operations located in Sumas, Washington. IKO Pacific, Inc. manufactures, distributes, and sells Shingles throughout the United States, including Washington State.

2.7 Defendant IKO Chicago, Inc. is an Illinois corporation with significant business operations located in Kankakee, Illinois. IKO Chicago, Inc. manufactures, distributes, and sells Shingles throughout the United States, including Washington State.

III. JURISDICTION AND VENUE

3.1 This is a proposed nationwide class action. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d) because the vast majority of class members are citizens of a state different from the home state of Defendant, and, on information and belief, the aggregate claims of individual class members exceed $5,000,000, exclusive of interest and costs.

3.2 Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) and (c) because IKO has a manufacturing facility in Whatcom County Washington, IKO has established sufficient contacts through its marketing and selling the Shingles in this district to subject it to

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682.2992

personal jurisdiction in this district and a substantial part of the events or omissions giving rise to these claims occurred in this district.

IV. APPLICABLE LAW

4.1 Plaintiffs bring this action under Washington law and the similar consumer protection laws of the forty-nine other states and the District of Columbia.

4.2 No enforceable choice-of-law agreement governs here or compels the application of different states' laws.

4.3 The proposed class includes individuals and entities who own IKO Shingles and who reside in states that, on information and belief, comprise a significant percentage of IKO's sales nationwide. A common nucleus of factual and legal issues dominates this litigation. Although some Class members may possess slightly differing remedies based on state statutory or common law, the claims asserted by the Plaintiff are predicated on the same core facts and legal claims with substantially the same relevant elements. To the extent distinct remedies may exist, they are local variants of a generally homogenous collection of causes which include actionable misrepresentation, unjust enrichment, and breach of express warranty.

4.4 Washington has the most significant relationship with the parties and to the events and occurrences that form the basis of the litigation. IKO manufactures its product in Washington and distributes its product in Washington. On information and belief, thousands of Washington residents have purchased and own IKO Shingles that have experienced or will experience the Defects.

4.5 Washington's interest in this action, which seeks to protect the rights and interests of Washington and other U.S. residents doing business in Washington, is greater than any other state.

4.6 Application of Washington law is neither arbitrary nor fundamentally unfair, because Washington has significant contacts and a significant aggregation of contacts that create a state interest in this litigation.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL 206.682-5600 • FAX 206.682-2992

V. FACTUAL ALLEGATIONS

5.1 IKO designs and manufactures asphalt roofing shingles. One of its major manufacturing facilities is located in Sumas, Washington.

5.2 IKO markets and sells the Shingles to tens of thousands of consumers throughout the United States under various brands and product names.

5.3 IKO markets and warrants all the Shingles, which are composed of asphalt, natural fibers, filler and mineral granules as durable, and as offering long-lasting protection for a specified life ranging from 25 to 50 years, or in some cases, for a lifetime.

5.4 IKO's sales brochures state the Shingles are, among other things, "[t]ime-tested and true" and "an excellent choice for exceptional roofing value."

5.5 It describes its warranty as "IRON CLAD" and claims it is "Setting the Standard" for "quality, durability, and innovation."

5.6 But IKO's Shingles have not lived up to that promise.

5.7 All of IKO's Shingles are uniformly defective such that Plaintiffs' and Class members' Shingles are failing before the time periods advertised, marketed, and guaranteed by IKO.

5.8 IKO did not adequately design, formulate, and test its Shingles before warranting, advertising, and selling them as durable and suitable for use as an exterior roofing product.

5.9 IKO knew or reasonably should have known the Shingles are defective as manufactured such that they fail prematurely due to moisture invasion. The Shingles crack, curl, blister deteriorate, blowing off roofs and otherwise do not perform in accordance with the reasonable expectations of consumers that such products be durable and suitable for use as a roofing products.

5.10 As a result of these failures, Plaintiffs and the Class have suffered actual damages in that the shingles on their homes, buildings, and other structures have and will

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

continue to fail prematurely, resulting in damage to the underlying roof and housing structure and requiring them to expend thousands of dollars to repair the damage associated with the incorporation of the Shingles into their homes, buildings, and other structures, and to prevent such damage from continuing.

5.11 Damage caused by the defective Shingles has included, but is not limited to: damage to underlying felt, damage to structural roof components, damage to plaster and sheetrock, and damage to walls, ceiling, and structural components.

5.12 Despite receiving a litany of complaints from consumers, such as Plaintiffs and other members of the Class, IKO has refused to convey effective notice to consumers about the defects, and refused to repair defective roofs fully or repair the property damaged by the premature failure of its product.

5.13 Even if IKO responds to a compliant its warranty is woefully inadequate under these circumstances in that it limits Plaintiffs' and Class members' recovery to replacement costs of individual Shingles piece by piece and excludes costs of labor to replace to the Shingles.

5.14 Because of the relatively small size of the typical individual Class member's claims, and because most homeowners or property owners have only modest resources, it is unlikely that individual Class members could afford to seek recovery against IKO on their own. This is especially true in light of the sizes and resources of IKO. A class action is, therefore, the only reasonable means by which Class members can obtain relief from IKO.

VI. TOLLING

6.1 Because the defects in the Shingles are latent and not detectable until manifestation, Plaintiffs and the Class members were not reasonably able to discover their Shingles were defective until after installation, despite their exercise of due diligence.

6.2 IKO knew the Shingles were defective prior to the time of sale, and concealed that material information from Plaintiff and all consumers.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

6.3 As such, any applicable statutes of limitation have been tolled by IKO's concealment of material facts and IKO is estopped from relying on any such statutes of limitation.

VII. CLASS ACTION ALLEGATIONS

7.1 This action is brought and may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23, and case law thereunder, on behalf of Plaintiffs and all others similarly situated, with the Class defined as follows:

> All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in the United States, on which IKO Shingles are or have been installed since 1979. IKO Shingles are defined to include without limitation all asphalt shingles manufactured or distributed by Defendants. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

7.2 Plaintiffs reserve the right to re-define the Class prior to class certification.

7.3 While the precise number of Class members is unknown to Plaintiffs, on information and belief, Plaintiffs believe the number is well in excess of 1,000 and the Class could include thousands such that joinder is impracticable. Disposition of these claims in single class action will provide substantial benefits to all parties and the Court.

7.4 The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, and all Class members, own homes, residences, or other structures on which defective Shingles manufactured by IKO have been installed. Those Shingles have failed, and will continue to fail, prematurely. The representative Plaintiffs, like all Class members, have been damaged by IKO's conduct in that they have incurred or will incur the costs of repairing or replacing their roofs and repairing the additional property damaged by the Shingles' premature failure. Furthermore, the factual bases of IKO's conduct

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

is common to all Class members and represents a common thread of deliberate, fraudulent and negligent misconduct resulting in injury to all members of the Class.

7.5 There are numerous questions of law and fact common to Plaintiffs and the Class. Those questions predominate over any questions that may affect individual Class members, and include the following:

7.5.1 Whether IKO Shingles are defective in that they fail prematurely and are not suitable for use as an exterior roofing product for the length of time advertised, marketed and warranted;

7.5.2 Whether the Shingles are defectively designed or manufactured.

7.5.3 Whether IKO knew or should have known of the defective nature of the Shingles;

7.5.4 Whether the Shingles failed to perform in accordance with the reasonable expectations of ordinary consumers;

7.5.5 Whether the risks of the Shingle's failure outweigh the benefits, if any, of its design;

7.5.6 Whether IKO properly warned consumers about the danger of premature failure;

7.5.7 Whether the Shingles fail to perform as advertised and warranted;

7.5.8 Whether IKO's conduct in marketing and selling its Shingles was unfair and deceptive.

7.5.9 Whether Plaintiffs and the Class are entitled to compensatory, exemplary and statutory damages, and the amount of such damages; and

7.5.10 Whether IKO should be declared financially responsible for notifying all Class members about their defective Shingles and for all damages associated with the incorporation of such Shingles into Class members' homes, residences, buildings, and other structures.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

7.6 Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting statewide, multistate and national consumer class actions, actions involving defective products, and specifically, actions involving defective construction materials. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class they represent, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the Class.

7.7 Plaintiffs and the members of the Class have suffered and will continue to suffer harm and damages as a result of IKO's conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the vast majority of the Class members likely would find the cost of litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class member's claims, it is likely that only a few Class members could afford to seek legal redress for IKO's conduct. Further, the cost of litigation could well equal or exceed any recovery.

7.8 Absent a class action, Class members will continue to incur damages without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation, in that class treatment would conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

VIII. FIRST CLAIM FOR RELIEF
(Actionable Misrepresentation)

8.1 Plaintiffs incorporate by reference each of the allegations contained in the proceeding paragraphs of this Complaint.

8.2 IKO knew or should have known that its Shingles were defectively designed and/or manufactured, would fail prematurely, were not suitable for their intended use, and otherwise were not as warranted and represented.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

8.3 IKO fraudulently, negligently, or recklessly concealed from or failed to disclose to Plaintiffs and the Class the defective nature of its Shingles.

8.4 IKO had a duty to Plaintiffs and the Class to disclose the defective nature of its Shingles because: (1) IKO was in a superior position to know the true facts about the design and manufacturing defects in its Shingles because the design and manufacturing defects are latent and would not appear until well after installation; (2) IKO made partial disclosures about the quality of its Shingles without revealing their true defective nature; and (3) IKO actively concealed the defective nature of its Shingles from Plaintiffs and the Class.

8.5 The facts concealed or not disclosed by IKO to Plaintiffs and the Class are material facts in that a reasonable person would have considered those facts to be important in deciding whether or not to purchase IKO's Shingles. Had Plaintiffs and the Class known the defective nature of IKO's Shingles, they would not have purchased them or would have paid less for them.

8.6 IKO intentionally, recklessly, or negligently concealed or failed to disclose the true nature of the design and manufacturing defects in its Shingles for the purpose of inducing Plaintiffs and the Class to act thereon, and Plaintiffs and the Class justifiably relied to their detriment upon the truth and completeness of IKO's representations about its Shingles. This is evidenced by Plaintiffs' and Class members' purchase of IKO Shingles.

8.7 IKO continued to conceal the defective nature of its Shingles even after members of the Class began to report problems. Indeed, IKO continues to cover up and conceal the true nature of the problem.

8.8 As a direct and proximate cause of IKO's misconduct, Plaintiffs and the Class have suffered actual damages in that (1) their roofs constructed with IKO Shingles have failed and will continue to fail prematurely, requiring them to expend money to repair or replace their roofs and repair damage to their underlying property.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

8.9 As a result of IKO's misconduct, Plaintiffs and the Class are entitled to compensatory damages, attorneys' fees, costs, and interest thereon.

IX. SECOND CLAIM FOR RELIEF
(Violation of Washington's Products Liability Act, RCW 7.72 *et seq.*)

9.1 Plaintiffs incorporate by reference, each of the allegations contained in the preceding paragraphs of this Complaint.

9.2 IKO is a product manufacturer and seller within the meaning of Washington's Products Liability Act (the "PLA").

9.3 The Shingles manufactured and sold by IKO are a product within the meaning of the PLA.

9.4 The Shingles were expected to and did reach Plaintiffs and the Class without substantial change to the condition in which they were manufactured and sold by IKO

9.5 The Shingles installed on Plaintiffs homes and the homes and structures of the Class, are not reasonably safe as designed in that the Shingles fail prematurely and are not suitable for use as a roofing product to the extent contemplated by an ordinary consumer.

9.6 At the time of manufacture, the risk that the Shingles would cause Plaintiffs and the Class harm, and the seriousness of those harms, was greater than IKO's cost to design and manufacture a product that would prevent those harms. Alternative shingle designs, as well as other products, were available that would serve the same purpose as the Shingles for a comparable cost.

9.7 Both at the time of manufacture and after the Shingles were distributed and sold, the likelihood that the Shingles would cause Plaintiffs' harm or similar harms, and the seriousness of those harms, rendered the warnings and instructions of IKO inadequate. IKO could have provided warnings and instructions that would have been adequate.

9.8 IKO expressly warranted that the Shingles would be free of manufacturing defects and perform for a specified life. This warranty related to material facts and was part of the basis of the bargain between IKO and Plaintiffs and the Class. IKO breached these express

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

warranties by selling a product that was defectively designed and manufactured, would fail prematurely, was not suitable for use as a roofing product, and was otherwise not as warranted.

9.9 As a direct and proximate result of IKO's conduct Plaintiffs' and the Class own structures with roofs that prematurely fail causing damage to the underlayment of Plaintiffs' and Class members' homes and other structures and other property as well.

9.10 As a direct and proximate result of IKO's conduct Plaintiffs and the Class have suffered actual damages in that they have incurred and will continue to incur expenses to diagnose, repair and replace their roofs and to repair damage to underlying roof elements, structures or interiors.

9.11 As a result of IKO's violations of the PLA, Plaintiffs and the Class are entitled to compensatory damages, attorneys' fees, costs and interest thereon.

X. THIRD CLAIM FOR RELIEF
(Breach of Express Warranty)

10.1 Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraph of this Complaint.

10.2 IKO marketed the Shingles with the intent that the Shingles would be purchased by Plaintiffs and members of the Class.

10.3 IKO expressly warranted that all of its Shingles would provide superior strength, durability, and wind and weather resistance, and would be free of manufacturing defects such that they would last 20 to 50 years, and in some cases, as long as a lifetime.

10.4 IKO's express warranties related to material facts and were part of the basis of the bargain Plaintiffs and members of the Class entered into when they purchased the Shingles.

10.5 IKO systematically breached its express warranties, in that the Shingles are defective as manufactured such that they are not durable and are destined to fail prematurely. The Shingles crack, split, curl, warp, discolor, delaminate, blow off, deteriorate prematurely, and otherwise do not perform as warranted.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682.2992

10.6 IKO has been on notice of its breach of express warranties though warranty claims previously made.

10.7 In addition, IKO has systematically denied or failed to pay in full the warranty claims.

10.8 As a direct result of the failure of the Shingles to perform as warranted, Plaintiffs and the Class have incurred and will continue to incur expenses to diagnose, repair and replace their roofs and to repair damage to underlying roof elements, structures or interiors.

10.9 Moreover, any contractual language contained in IKO's published warranties that attempts to disclaim express warranties or limit remedies is unconscionable, fails to conform to the requirements for limiting warranties on remedies under applicable law, causes the warranties to fail of their essential purpose, and is, thus, unconscionable and void.

XI. FOURTH CLAIM FOR RELIEF
(Violation of Washington's Consumer Protection Act, RCW 19.86 *et seq.*)

11.1 Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

11.2 IKO engaged in unfair or deceptive practices in violation of Washington's Consumer Protection Act Wash. Rev. Code § 19.86 *et seq.* (2008) (hereinafter, "CPA") when it (1) represented the Shingles were durable and free of defects when, at best, it lacked credible evidence to support those claims, and, at worst, knew the Shingles would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not as warranted and represented by IKO; (2) failed to disclose to, or concealed from, consumers material facts about the defective nature of the Shingles; (3) failed to disclose its own knowledge of the defective nature of the Shingles; and (4) limited its warranty obligations in an unfair and unconscionable way in light of its failure to disclose the defective nature of the Shingles.

11.3 IKO either knew or should have known its Shingles were defective, would fail prematurely and were not as warranted and represented by Defendants.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

11.4 IKO's conduct and omissions described herein repeatedly occurred in IKO's trade or business and were capable of deceiving a substantial portion of the consuming pubic.

11.5 The facts concealed or not disclosed by IKO are material facts in that Plaintiffs and any reasonable consumer would have considered those facts important in deciding whether to purchase the Shingles or purchase homes or structures with roofs constructed with the Shingles. Had Plaintiffs and the Class known the Shingles were defective and would fail prematurely they would not have purchased the Shingles or they would have paid less.

11.6 IKO's unlawful conduct is continuing, with no indication that IKO will cease.

11.7 As a direct and proximate cause of IKO's violations of the CPA, described above, Plaintiffs and members of the Class have been injured in that they purchased defective Shingles that do not live up to reasonable consumer expectations and have failed, or will fail, prematurely.

11.8 As a direct and proximate result of IKO's unfair and deceptive acts and practices, Plaintiffs and the other members of the Class have and will suffer actual damages, which include without limitation, costs to inspect, repair, or replace their Shingles and other property in an amount to be determined at trial.

11.9 As a direct and proximate result of IKO's unfair and deceptive conduct Plaintiffs and the Class are entitled to injunctive relief in the form of restitution and/or disgorgement of funds paid to IKO, compensatory damages for the repair and replacement of their roofing shingles and repair of their damaged property, and exemplary (treble) damages, attorneys' fees and costs as provided by RCW 19.86 *et seq.*

XII. FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

12.1 Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

12.2 Plaintiffs and the Class conferred a benefit upon IKO by paying it for IKO Shingles.

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

12.3 IKO either knew or should have known that the payments rendered by Plaintiffs and the Class were given and received with the expectation that the IKO Shingles would perform as represented and warranted. For IKO to retain the benefit of the payments under these circumstances is inequitable.

12.4 As a result of IKO's wrongful conduct, Plaintiffs and the Class are entitled to restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by IKO, plus attorneys' fees, costs, and interest thereon.

XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, request the Court to enter judgment against IKO, as follows:

A. Enter an order certifying the proposed plaintiff Class, designating Plaintiffs as the named representative of the Class, and designating the undersigned as Class Counsel;

B. Declare that IKO is financially responsible for notifying all Class members of the problems with IKO products;

C. Enter an order enjoining IKO from further deceptive advertising, marketing, distribution, and sales practices with respect to IKO products, and requiring IKO to remove and replace Plaintiffs' and Class members' roofs with a suitable alternative roofing material of Plaintiffs' and Class members' choosing;

D. Enter an award Plaintiffs and the Class compensatory, exemplary, and statutory damages, including interest thereon, in an amount to be proven at trial;

E. Declare that IKO must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of IKO materials, or order IKO to make full restitution to Plaintiffs and the members of the Class;

F. Enter an award of attorneys' fees and costs, as allowed by law;

G. Enter an award of pre-judgment and post-judgment interest, as provided by law;

TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
TEL. 206.682-5600 • FAX 206.682-2992

H. Grant Plaintiffs and the Class leave to amend the Complaint to conform to the evidence produced at trial; and

I. Grant such other or further relief as may be appropriate under the circumstances.

XIV. DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

DATED this 26th day of June, 2009.

TOUSLEY BRAIN STEPHENS PLLC

By: /s/ Kim D. Stephens, WSBA #11984

Kim D. Stephens, WSBA #11984
Email: kstephens@tousley.com
Nancy A. Pacharzina, WSBA #25946
Email: npacharzina@tousley.com
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: (206) 682-5600
Facsimile: (206) 682-2992

Clayton D. Halunen
Shawn J. Wanta
HALUNEN & ASSOCIATES
1650 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 605-4098
Facsimile: (612) 605-4099

Charles Schaffer
Arnold Levin
LEVIN, FISHBEIN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19106-3697
Telephone: (215) 592-1500
Facsimile: (215) 592-4663

Robert J. Shelquist
LOCKRIDGE, GRINDAL & NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, Minnesota 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981

Michael A. McShane
AUDET & PARTNERS, LLP
221 Main Street, Suite 1460
San Francisco, California 94105
Telephone: (415) 982-1776
Facsimile: (415) 576-1776

Attorneys for Plaintiffs

Attachment E

ASHMAN

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 3.2.2 (Chicago)
CIVIL DOCKET FOR CASE #: 1:09-cv-04443

McNeil, et al. v. IKO Manufacturing, Inc., et al.
Assigned to: Honorable Samuel Der-Yeghiayan
Demand: $9,999,000
Cause: 28:1332 Diversity-Contract Dispute

Date Filed: 07/23/2009
Jury Demand: Plaintiff
Nature of Suit: 195 Contract Product Liability
Jurisdiction: Diversity

Plaintiff

Pamela D. McNeil

represented by **Michael Alan Johnson**
Michael A. Johnson & Associates
415 North LaSalle Street
Suite 502
Chicago , IL 60610
(312) 222-0660
Email: mjohnsonlawyer@aol.com
ATTORNEY TO BE NOTICED

Plaintiff

James K Cantwil
class representatives on behalf of themselves and others similarly situated

represented by **Michael Alan Johnson**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

IKO Manufacturing, Inc.
a Delaware Corporation

Defendant

IKO Industries, Ltd.
a Canadian corporation

Defendant

IKO Chicago, Inc.
an Illinois corporation

Defendant

IKO Sales, Ltd.
a Canadian corporation

Defendant

IKO Pacific, Inc.
a Washington corporation

Date Filed	#	Docket Text

07/23/2009	1	CIVIL Cover Sheet (Johnson, Michael) (Entered: 07/23/2009)
07/23/2009	2	ATTORNEY Appearance for Plaintiff pamela d mcniel by Michael Alan Johnson (Johnson, Michael) (Entered: 07/23/2009)
07/24/2009	3	COMPLAINT *Receipt # 075200000000003952023* filed by James K Cantwil, pamela d mcniel; Jury Demand. (Johnson, Michael) (Entered: 07/24/2009)
07/24/2009		CASE ASSIGNED to the Honorable Samuel Der-Yeghiayan. Designated as Magistrate Judge the Honorable Martin C. Ashman. (jn,) (Entered: 07/24/2009)
07/31/2009	4	MINUTE entry before the Honorable Samuel Der-Yeghiayan: Initial status hearing set for 09/24/09 at 9:00 a.m. At least four working days before the initial status hearing, the parties shall conduct a FRCP 26(f) conference and file a joint written Initial Status Report, not to exceed five pages in length, and file the Court's Joint Jurisdictional Status Report and deliver courtesy copies to this Court's chambers. The Court's standing orders on the Initial Status Report and Joint Jurisdictional Status Report maybe obtained from Judge Der-Yeghiayan's web page or from this Court's Courtroom Deputy. Counsel for the Plaintiff is warned that failure to serve summons and complaint on Defendants will result in a dismissal of the action and/or a dismissal of that Defendant not properly served pursuant to FRCP 4. Counsel for Plaintiff is further directed to file with the Clerk of Court, the appropriate returns of service and/or waivers of service. Mailed notice (mw,) (Entered: 07/31/2009)
08/04/2009	5	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 07520000000003979985. (Johnson, Michael) (Entered: 08/04/2009)
08/04/2009	6	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 07520000000003980082. (Johnson, Michael) (Entered: 08/04/2009)
08/04/2009	7	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 50, receipt number 07520000000003980142. (Johnson, Michael) (Entered: 08/04/2009)
08/04/2009	8	SUMMONS Issued as to Defendants IKO Manufacturing, Inc., IKO Industries, Ltd., IKO Chicago, Inc., IKO Sales, Ltd., IKO Pacific, Inc. (jj,) (Entered: 08/05/2009)

PACER Service Center

Transaction Receipt

08/06/2009 15:01:15

PACER Login:	es0405	**Client Code:**	00298-00001
Description:	Docket Report	**Search Criteria:**	1:09-cv-04443
Billable Pages:	2	**Cost:**	0.16

U.S. District Court
District of New Jersey [LIVE] (Newark)
CIVIL DOCKET FOR CASE #: 2:09-cv-02017-DRD-MAS

ZANETTI v. IKO MANUFACTURING, INC.
Assigned to: Judge Dickinson R. Debevoise
Referred to: Magistrate Judge Michael A. Shipp
Cause: 28:1332 Diversity-Property Damage

Date Filed: 04/29/2009
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

DEBRA ZANETTI
on behalf of herself and others similarly situated

represented by **MICHAEL M. WEINKOWITZ**
LEVIN, FISHBEIN, SEDRAN & BERMAN, ESQS.
510 WALNUT STREET
SUITE 500
PHILADELPHIA , PA 19106
(215) 592-1500
Email: mweinkowitz@lfsblaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

IKO MANUFACTURING, INC.
A DELAWARE CORPORATION

represented by **VANESSA M. KELLY**
SCHWARTZ KELLY, LLC
67 BEAVER AVENUE
Suite 25
ANNANDALE , NJ 08801
(908) 735-2377
Fax: (908) 735-2388
Email: vkelly@schwartzkelly.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/29/2009	1	COMPLAINT against IKO MANUFACTURING, INC. (Filing fee $350 receipt number 2506433.) JURY DEMAND., filed by DEBRA ZANETTI. (Attachments: # 1 Summons)(kd) (Entered: 04/30/2009)
04/30/2009	2	SUMMONS ISSUED as to IKO MANUFACTURING, INC. with answer to complaint due within *20* days. (SUMMONS MAILED TO COUNSEL) (kd) (Entered: 04/30/2009)
06/01/2009	3	AMENDED DOCUMENT by DEBRA ZANETTI.. (WEINKOWITZ, MICHAEL) (Entered: 06/01/2009)
06/01/2009		CLERK'S QUALITY CONTROL MESSAGE: the Amended Complaint (doc #3) filed by M. Weinkowitz on 6/1/09 was submitted incorrectly as an Amended Document. Please resubmit the Amended Complaint using the correct event code which can be found under Complaints and Other Initiating Documents (Amended Complaint). This

		submission will remain on the docket unless otherwise ordered by the court. (jd,) (Entered: 06/01/2009)
06/01/2009	4	AMENDED COMPLAINT against IKO MANUFACTURING, INC., filed by DEBRA ZANETTI.(WEINKOWITZ, MICHAEL) (Entered: 06/01/2009)
06/04/2009	5	MOTION for Leave to Appear Pro Hac Vice as to Charles Schaffer by DEBRA ZANETTI. (Attachments: # 1 p/o)(jd,) (Entered: 06/04/2009)
06/04/2009	6	MOTION for Leave to Appear Pro Hac Vice as to Arnold Levin by DEBRA ZANETTI. (Attachments: # 1 p/o)(jd,) (Entered: 06/04/2009)
06/04/2009		Set Deadlines as to 6 MOTION for Leave to Appear Pro Hac Vice, 5 MOTION for Leave to Appear Pro Hac Vice. Motion set for 7/13/2009 10:00 AM before Judge Dickinson R. Debevoise. (jd,) (Entered: 06/04/2009)
06/26/2009	7	Application and Proposed Order for Clerk's Order to extend time to answer as to Defendant IKO Manufacturing, Inc.. Attorney VANESSA M. KELLY and VANESSA M. KELLY for IKO MANUFACTURING, INC. added. (KELLY, VANESSA) (Entered: 06/26/2009)
06/29/2009		CLERK'S TEXT ORDER: Application (doc #7) for an extension of time is granted. Answer Due 7/14/09 as to IKO Manufacturing, Inc. (jd,) (Entered: 06/29/2009)
07/06/2009	8	ORDER granting 5 Motion for Leave to Appear Pro Hac Vice; granting 6 Motion for Leave to Appear Pro Hac Vice as to Arnold Levin and Charles E. Schaffer. Signed by Magistrate Judge Michael A. Shipp on 7/2/09. (jd,) (Entered: 07/06/2009)
07/10/2009	9	MOTION for Extension of Time to File Answer *or otherwise respond to Amended Complaint* by IKO MANUFACTURING, INC.. (KELLY, VANESSA) (Entered: 07/10/2009)
07/10/2009	10	MOTION for Extension of Time to File Answer re 9 MOTION for Extension of Time to File Answer *or otherwise respond to Amended Complaint Certification of Vanessa M. Kelly In Support of Motion* by IKO MANUFACTURING, INC.. (KELLY, VANESSA) (Entered: 07/10/2009)
07/10/2009	11	CERTIFICATE OF SERVICE by IKO MANUFACTURING, INC. re 10 MOTION for Extension of Time to File Answer re 9 MOTION for Extension of Time to File Answer *or otherwise respond to Amended Complaint Certification of Vanessa M. Kelly In Support of Motion* MOTION for Extension of Time to File Answer re 9 MOTION for Extension of Time to File Answer *or otherwise respond to Amended Complaint Certification of Vanessa M. Kelly In Support of Motion*, 9 MOTION for Extension of Time to File Answer *or otherwise respond to Amended Complaint* (KELLY, VANESSA) (Entered: 07/10/2009)
07/10/2009	12	Certification on behalf of IKO MANUFACTURING, INC. Re 9 Motion for Extension of Time to File Answer, 11 Certificate of Service,,. (KELLY, VANESSA) (Entered: 07/10/2009)
07/10/2009		CLERK'S NOTE: please disregard document #10 & see document #12 (as per counsel). (sr,) (Entered: 07/10/2009)
07/10/2009		Set Deadlines as to 9 MOTION for Extension of Time to File Answer *or otherwise respond to Amended Complaint*. Motion set for 8/17/2009 before Judge Dickinson R. Debevoise. (jd,) (Entered: 07/10/2009)
07/14/2009	13	ORDER granting 9 Motion for Extension of Time to Answer; Deft IKO's answer or responsive pleading is due 8/13/09. Signed by Judge Dickinson R. Debevoise on 7/14/09. (jd,) (Entered: 07/14/2009)

PACER Service Center			
Transaction Receipt			
08/06/2009 15:58:42			
PACER Login:	es0405	**Client Code:**	00298-00001
Description:	Docket Report	**Search Criteria:**	2:09-cv-02017-DRD-MAS Start date: 1/1/1970 End date: 8/6/2009
Billable Pages:	2	**Cost:**	0.16

MEDIATION

U.S. DISTRICT COURT
U.S. District Court, Western District of New York (Buffalo)
CIVIL DOCKET FOR CASE #: 1:09-cv-00409-WMS

Czuba v. IKO Manufacture, Inc.
Assigned to: Hon. William M. Skretny
Demand: $5,000,000
Cause: 28:1332 Diversity-Property Damage

Date Filed: 04/29/2009
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

Gerald P. Czuba

represented by **Arnold Levin**
Levin, Fishbein Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia , PA 19106
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brendan S. Thompson
Cuneo Gilbert & LaDuca, LLP
507 C Street, N.E.
Washington , DC 20002
202-789-3960
Fax: 202-789-1813
Email: brendant@cuneolaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles Joseph LaDuca
Cuneo Gilbert & LaDuca, LLP
507 C Street, N.E.
Washington , DC 20002
202-789-3960
Fax: 202-789-1813
Email: charlesL@cuneolaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Clayton D. Halunen
Halunen & Associates
1650 IDS Center
80 S 8th Street
Minneapolis , MN 55404
612-605-4098
Fax: 612-605-4099
Email: halunen@halunenlaw.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

David G. Jay
69 Delaware Avenue
Suite 1103
Buffalo , NY 14202-3811
(716) 856-6300
Fax: (176) 856-6100
Email: davidgjay@verizon.net
ATTORNEY TO BE NOTICED

Robert Shelquist
Lockridge Grindal Nauen P.L.L.P.
100 Washington Ave. South
Suite 2200
Minneapolis , MN 55401-2179
612-339-6900
Fax: 612-339-0981
PRO HAC VICE
ATTORNEY TO BE NOTICED

Shawn J. Wanta
Halunen & Associates
1650 IDS Center
80 S 8th Street
Minneapolis , MN 55404
612-605-4098
Fax: 612-605-4099
Email: wanta@halunenlaw.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Curtis Czajka

represented by

Arnold Levin
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brendan S. Thompson
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles Joseph LaDuca
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Clayton D. Halunen
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

David G. Jay
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Shawn J. Wanta
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Richard Peleckis
individually and on behalf of a Class of others similarly situated

represented by **Arnold Levin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brendan S. Thompson
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles Joseph LaDuca
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Clayton D. Halunen
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

David G. Jay
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Shawn J. Wanta
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

IKO Manufacture, Inc.
a Delaware Corporation

represented by **Joseph W. Dunbar**
Damon Morey LLP
200 Delaware Avenue
Suite 1200
Buffalo , NY 14202
716-858-3732
Fax: 716-856-5510
Email: jdunbar@damonmorey.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

IKO Industries, LTD
a Canadian corporation

Defendant

IKO Sales, LTD
a Canadian corporation

Defendant

IKO Pacific, INC
a Washington corporation

represented by **Joseph W. Dunbar**
(See above for address)
LEAD ATTORNEY

Defendant

IKO Chicago, INC
an Illinois corporation

represented by **Joseph W. Dunbar**
(See above for address)
LEAD ATTORNEY

Date Filed	#	Docket Text
04/29/2009	1	COMPLAINT against IKO Manufacture, Inc. (Filing fee $350.00 receipt number 012460), filed by Gerald P. Czuba. (DLC) (Entered: 04/30/2009)
04/29/2009		Summons Issued as to IKO Manufacture, Inc.. (DLC) (Entered: 04/30/2009)
04/29/2009	2	AUTOMATIC REFERRAL to Mediation. (DLC) (Entered: 04/30/2009)
05/07/2009	3	NOTICE by Gerald P. Czuba *for Motion Pro Hac Vice Application of Brendan S. Thompson* (LaDuca, Charles) (Entered: 05/07/2009)
05/08/2009		E-Filing Notification: 3 NOTICE by Gerald P. Czuba for Motion Pro Hac Vice Application of Brendan S. Thompson (filed by LaDuca, Charles). *Document must be re-filed using the Motion event.* (DLC) (Entered: 05/08/2009)
05/08/2009	4	NOTICE by Gerald P. Czuba *for Admission Pro Hac Vice of Brendan S. Thompson* (LaDuca, Charles) (Entered: 05/08/2009)
05/11/2009		SECOND E-Filing Notification: 4 NOTICE by Gerald P. Czuba for Admission Pro Hac Vice of Brendan S. Thompson (filed by LaDuca, Charles.) *Document must be re-filed using the correct event (Motion).* (DLC) (Entered: 05/11/2009)
05/11/2009	5	MOTION for Leave to Appear for Admission to Practice Pro Hac Vice *of Brendan S. Thompson* by Gerald P. Czuba.(LaDuca, Charles) (Entered: 05/11/2009)
05/12/2009		Remark - Brendan S. Thompson is admitted to practice in Maryland. (DLC) (Entered: 05/12/2009)
05/14/2009	6	SUMMONS Returned Executed by Gerald P. Czuba. IKO Manufacture, Inc. served on 5/4/2009, answer due 5/26/2009. (LaDuca, Charles) Modified on 5/15/2009 to correct service party (SG). (Entered: 05/14/2009)
05/15/2009		E-Filing Notification: 6 SUMMONS Returned Executed by Gerald P. Czuba. IKO Manufacture, Inc. served on 5/4/2009, answer due 5/26/2009. (LaDuca, Charles) Modified on 5/15/2009 to correct service party (SG). (SG) (Entered: 05/15/2009)
05/15/2009		Answer due date updated as to IKO Manufacture, Inc. answer due 5/26/2009 (SG)

		(Entered: 05/15/2009)
05/19/2009	7	NOTICE of Appearance by Charles Joseph LaDuca on behalf of Gerald P. Czuba (LaDuca, Charles) (Entered: 05/19/2009)
05/21/2009		E-Filing Notification: 7 NOTICE of Appearance by Charles Joseph LaDuca on behalf of Gerald P. Czuba (filed by LaDuca, Charles.) *Document is not in compliance with signature requirements, signatory to document must be the same as e-filer. Document must be re-filed.* (DLC) (Entered: 05/21/2009)
05/21/2009	8	TEXT ORDER. IT HEREBY IS ORDERED that the 5 Motion for Admission to Practice Pro Hac Vice as to Brendan S. Thompson is DENIED for failure to comply with Local Rule 83.1(l). SO ORDERED. Issued by William M. Skretny U.S.D.J. on 5/19/2009. (MEAL) (Entered: 05/21/2009)
05/21/2009	9	MOTION for Extension of Time to File Answer re 1 Complaint by IKO Manufacture, Inc..(Dunbar, Joseph) (Entered: 05/21/2009)
05/21/2009	10	NOTICE of Appearance by David G. Jay on behalf of Gerald P. Czuba (Jay, David) (Entered: 05/21/2009)
05/21/2009	11	NOTICE by Gerald P. Czuba *Notice of Pro Hac Vice of Robert K. Shelquist* (LaDuca, Charles) (Entered: 05/21/2009)
05/21/2009	12	NOTICE by Gerald P. Czuba *Notice of Pro Hac Vice of Arnold Levin* (LaDuca, Charles) (Entered: 05/21/2009)
05/21/2009	13	NOTICE by Gerald P. Czuba *Notice of Pro Hac Vice of Charles E. Schaffer* (LaDuca, Charles) (Entered: 05/21/2009)
05/22/2009		E-Filing Notification: 12 NOTICE by Gerald P. Czuba Notice of Pro Hac Vice of Arnold Levin, 11 NOTICE by Gerald P. Czuba Notice of Pro Hac Vice of Robert K. Shelquist, and 13 NOTICE by Gerald P. Czuba Notice of Pro Hac Vice of Charles E. Schaffer (filed by LaDuca, Charles.) *All three documents must be refiled using the event Motion to Appear.* (DLC) (Entered: 05/22/2009)
05/22/2009	14	MOTION for Leave to Appear Pro Hac Vice of Arnold Levin by Gerald P. Czuba. (LaDuca, Charles) (Entered: 05/22/2009)
05/22/2009	15	MOTION for Leave to Appear Pro Hac Vice of Charles E. Schaffer by Gerald P. Czuba.(LaDuca, Charles) (Entered: 05/22/2009)
05/22/2009	16	MOTION for Leave to Appear Pro Hac Vice Of Robert K. Shelquist by Gerald P. Czuba.(LaDuca, Charles) (Entered: 05/22/2009)
05/22/2009	17	MOTION for Leave to Appear Pro Hac Vice of Michael McShane by Gerald P. Czuba. (LaDuca, Charles) (Entered: 05/22/2009)
05/22/2009	18	MOTION for Extension of Time to File Answer re 9 MOTION for Extension of Time to File Answer re 1 Complaint by IKO Manufacture, Inc..(Dunbar, Joseph) (Entered: 05/22/2009)
05/26/2009		Remark - Arnold Levin and Charles Schaffer is admitted to practice in PA; Robert Shelquist is admitted to practice in Minnesota; and Michael McShane is admitted to practive in CA. All of the above attorneys are in good standing. (DLC) (Entered: 05/26/2009)
05/26/2009	19	NOTICE of Appearance by Charles Joseph LaDuca on behalf of Gerald P. Czuba (LaDuca, Charles) (Entered: 05/26/2009)
05/26/2009	20	MOTION for Leave to Appear Notice of Pro Hac Vice for Clayton D. Halunen by

		Gerald P. Czuba.(LaDuca, Charles) (Entered: 05/26/2009)
05/26/2009	21	MOTION for Leave to Appear Notice of Pro Hac Vice for Shawn J. Wanta by Gerald P. Czuba.(LaDuca, Charles) (Entered: 05/26/2009)
05/26/2009	22	MOTION for Leave to Appear Notice of Pro Hac Vice for Christopher J. Jozwiak by Gerald P. Czuba.(LaDuca, Charles) (Entered: 05/26/2009)
05/27/2009		Remark - Clayton Halunen, Shawn Wanta and Christopher Jozwiak is authorized to practice in Minnesota. (DLC) (Entered: 05/27/2009)
06/02/2009	23	TEXT ORDER. IT HEREBY IS ORDERED THAT the 9 Defendant's Motion for Extension of Time to Answer or otherwise respond to Plaintiff's Complaint is GRANTED. Time is extended to 6/22/2009. SO ORDERED. Issued by William M. Skretny U.S.D.J. on 5/29/2009. (MEAL) (Entered: 06/02/2009)
06/08/2009	24	MOTION for Leave to Appear Pro Hac Vice *Brendan S. Thompson* by Gerald P. Czuba.(LaDuca, Charles) (Entered: 06/08/2009)
06/09/2009		Remark - Brendan Thompson is admitted to practice in Maryland. (DLC) (Entered: 06/09/2009)
06/15/2009		Pro Hac Vice fee paid for Shawn J. Wanta: $75.00, receipt number 013228. (DLC) (Entered: 06/29/2009)
06/15/2009		Pro Hac Vice fee paid for Clayton D. Halunen: $75.00, receipt number 013229. (DLC) (Entered: 06/29/2009)
06/22/2009	25	MOTION for Extension of Time to File Answer *or Otherwise Respond to Plaintiff's Complaint* by IKO Manufacture, Inc..(Dunbar, Joseph) (Entered: 06/22/2009)
06/25/2009	26	AMENDED COMPLAINT against Gerald P. Czuba, filed by Gerald P. Czuba. (LaDuca, Charles) (Entered: 06/25/2009)
06/26/2009	27	TEXT ORDER. IT HEREBY IS ORDERED that the 14 15 16 17 20 21 22 24 Motions for Pro Hac Admission of Arnold Levin, Charles E. Schaffer, Robert K. Shelquist, Michael McShane, Clayton D. Halunen, Shawn J. Wanta, Christopher D. Jozwiak and Brendan S. Thompson are GRANTED, subject to payment of the requisite fees. SO ORDERED. Issued by William M. Skretny U.S.D.J. on 6/24/2009. (MEAL) (Entered: 06/26/2009)
06/26/2009	28	ORDER granting 18 Defendant's Motion for Extension of Time to Answer or Otherwise Respond to Plaintiff's Complaint. Time is extended until 7/20/2009. SO ORDERED. Issued by William M. Skretny U.S.D.J. on 6/24/2009. (MEAL) (Entered: 06/26/2009)
06/30/2009		Pro Hac Vice fee paid for Brendan Thompson: $75.00, receipt number 013410. (DLC) (Entered: 07/01/2009)
07/07/2009		Pro Hac Vice fee paid for Robert K. Shelquist: $75.00, receipt number 013472. (DLC) (Entered: 07/14/2009)
07/09/2009		Summons Issued as to IKO Industries, LTD, IKO Sales, LTD, IKO Pacific, INC, IKO Chicago, INC, IKO Manufacture, Inc., for the Amended Complaint. (DLC) (Entered: 07/09/2009)
07/20/2009	29	MOTION for Extension of Time to File Answer re 1 Complaint by IKO Pacific, INC, IKO Chicago, INC, IKO Manufacture, Inc..(Dunbar, Joseph) Modified on 7/21/2009 (DLC). (Entered: 07/20/2009)
07/20/2009	30	MOTION for Leave to Appear Pro Hac Vice by IKO Pacific, INC, IKO Chicago, INC,

		IKO Manufacture, Inc..(Dunbar, Joseph) Modified on 7/21/2009 (DLC). (Entered: 07/20/2009)
07/21/2009		E-Filing Notification: Corrected docket text re 30 MOTION for Leave to Appear Pro Hac Vice and 29 MOTION pursuant to out of town attorney Jack Tyson they only represent three of the defendants' filed by local counsel Joseph Dunbar. Modified on 7/21/2009 (DLC). (Entered: 07/21/2009)
07/21/2009		Remark - Andrew George Klevorn is authorized to practice in Illinois. (DLC) (Entered: 07/21/2009)
08/06/2009	31	TEXT ORDER. IT HEREBY IS ORDERED that Defendant IKO Manufacturing, Inc.'s 29 Motion for Extension of Time to Answer of Otherwise Respond to Plaintiffs' Amended Complaint is GRANTED. The Court will stay Defendant IKO Manufacturing Inc.'s time to answer or other wise respond at this time subject to reconsideration at a later date. Counsel for the parties are DIRECTED to file a status report with the Court regarding any pending Multi-District Litigation no later than 9/20/2009. SO ORDERED. Issued by William M. Skretny U.S.D.J. on 7/31/2009. (MEAL) (Entered: 08/06/2009)

PACER Service Center

Transaction Receipt

08/06/2009 16:03:19

PACER Login:	es0405	**Client Code:**	00298-00001
Description:	Docket Report	**Search Criteria:**	1:09-cv-00409-WMS
Billable Pages:	6	**Cost:**	0.48

JURYDEMAND

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:09-cv-00887-RSM

Hight et al v. IKO Manufacturing Inc et al
Assigned to: Judge Ricardo S Martinez
Cause: 28:1332 Diversity-Property Damage

Date Filed: 06/26/2009
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod. Liability
Jurisdiction: Diversity

Plaintiff

Michael Hight

represented by **Kim D Stephens**
TOUSLEY BRAIN STEPHENS
1700 SEVENTH AVE
STE 2200
SEATTLE , WA 98101
206-682-5600
Email: kstephens@tousley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nancy A Pacharzina
TOUSLEY BRAIN STEPHENS
1700 SEVENTH AVE
STE 2200
SEATTLE , WA 98101
206-682-5600
Fax: 206-682-2992
Email: npacharzina@tousley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Michael Augustine
on behalf of themselves and all others similarly situated

represented by **Kim D Stephens**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Nancy A Pacharzina
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

IKO Manufacturing Inc
a Delaware corporation

represented by **Andrew G Klevorn**
EIMER STAHL KLEVORN & SOLBERG

224 S MICHIGAN AVE
STE 1100
CHICAGO , IL 60604
312-660-7600
Email: aklevorn@eimerstahl.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

John K Theis
EIMER STAHL KLEVORN & SOLBERG
224 S MICHIGAN AVE
STE 1100
CHICAGO , IL 60604
312-660-7600
Email: jtheis@eimerstahl.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Nathan P Eimer
EIMER STAHL KLEVORN & SOLBERG
224 S MICHIGAN AVE
STE 1100
CHICAGO , IL 60604
312-660-7600
Email: neimer@eimerstahl.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jack Lovejoy
CABLE LANGENBACH KINERK & BAUER
1000 2ND AVE
STE 3500
SEATTLE , WA 98104
206-292-8800
Email: jlovejoy@cablelang.com
ATTORNEY TO BE NOTICED

Defendant

IKO Industries Ltd
a Canadian corporation

Defendant

IKO Sales Ltd
a Canadian corporation

Defendant

IKO Pacific Inc
a Washington corporation

represented by **Andrew G Klevorn**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE

ATTORNEY TO BE NOTICED

John K Theis
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Nathan P Eimer
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jack Lovejoy
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

IKO Chicago Inc
an Illinois corporation

represented by **Andrew G Klevorn**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

John K Theis
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Nathan P Eimer
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jack Lovejoy
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/26/2009	1	COMPLAINT - CLASS ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION against all defendants (Summons(es) NOT issued)(Receipt # SEA27184), filed by Michael Hight, Michael Augustine. (Attachments: # 1 Civil Cover Sheet, # 2 Transmittal Email)(MKB) (Entered: 06/30/2009)
07/07/2009		MINUTE ORDER By direction of Judge Ricardo S Martinez: The clerk shall place Dkt. # 1-3 (transmittal e-mail) under seal. (LS) (Entered: 07/07/2009)
07/07/2009	3	PRAECIPE TO ISSUE SUMMONS ; clerk iss'd. (RS) (Entered: 07/09/2009)
07/23/2009	4	NOTICE of Appearance by attorney Jack Lovejoy on behalf of Defendants IKO Pacific Inc, IKO Chicago Inc, IKO Manufacturing Inc. (Lovejoy, Jack) (Entered: 07/23/2009)

07/23/2009	5	APPLICATION OF ATTORNEY Andrew G. Klevorn FOR LEAVE TO APPEAR PRO HAC VICE for Defendants IKO Pacific Inc, IKO Chicago Inc, IKO Manufacturing Inc (Fee Paid) Receipt No. 0981000000001810987. (Attachments: # 1 Attorney Registration Form)(Lovejoy, Jack) (Entered: 07/23/2009)
07/23/2009	6	APPLICATION OF ATTORNEY John K. Theis FOR LEAVE TO APPEAR PRO HAC VICE for Defendants IKO Pacific Inc, IKO Chicago Inc, IKO Manufacturing Inc (Fee Paid) Receipt No. 0981000000001811014. (Attachments: # 1 Attorney Registration Form)(Lovejoy, Jack) (Entered: 07/23/2009)
07/23/2009	7	APPLICATION OF ATTORNEY Nathan P. Eimer FOR LEAVE TO APPEAR PRO HAC VICE for Defendants IKO Pacific Inc, IKO Chicago Inc, IKO Manufacturing Inc (Fee Paid) Receipt No. 0981000000001811023. (Attachments: # 1 Attorney Registration Form)(Lovejoy, Jack) (Entered: 07/23/2009)
07/24/2009	8	ORDER re 5 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Andrew G Klevorn for IKO Pacific Inc, IKO Chicago Inc and IKO Manufacturing Inc, by Bruce Rifkin. (No document associated with this docket entry, text only.)(DS) (Entered: 07/24/2009)
07/24/2009	9	ORDER re 6 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney John K Theis for IKO Pacific Inc, IKO Chicago Inc and IKO Manufacturing Inc, by Bruce Rifkin. (No document associated with this docket entry, text only.)(DS) (Entered: 07/24/2009)
07/24/2009	10	ORDER re 7 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Nathan P. Eimer for IKO Pacific Inc, IKO Chicago Inc and IKO Manufacturing Inc, by Bruce Rifkin. (No document associated with this docket entry, text only.)(DS) Modified on 7/24/2009 (CL). (Entered: 07/24/2009)
07/24/2009		NOTICE of Docket Text Modification re 10 Order on Application for Leave to Appear Pro Hac Vice : changed text to read: admits attorney Nathan P. Eimer. (CL) (Entered: 07/24/2009)
07/27/2009	11	MOTION for Extension of Time to File Answer by Defendants IKO Pacific Inc, IKO Chicago Inc, IKO Manufacturing Inc. (Attachments: # 1 Proposed Order) Noting Date 7/27/2009, (Lovejoy, Jack) (Entered: 07/27/2009)
07/30/2009	12	ORDER GRANTING 11 Motion for Extension of Time to file answer by Judge Ricardo S Martinez. (KL) (Entered: 07/30/2009)
08/05/2009	13	APPLICATION OF ATTORNEY Clayton D. Halunen FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Michael Hight, Michael Augustine (Fee Paid) Receipt No. 0981000000001821264. (Attachments: # 1 CM/ECF Registration)(Pacharzina, Nancy) (Entered: 08/05/2009)
08/05/2009	14	APPLICATION OF ATTORNEY Shawn J. Wanta FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Michael Hight, Michael Augustine (Fee Paid) Receipt No. 0981000000001821274. (Attachments: # 1 CM/ECF Registration)(Pacharzina, Nancy) (Entered: 08/05/2009)

PACER Service Center

Transaction Receipt

08/06/2009 13:01:39

PACER Login:	es0405	**Client Code:**	00298-00001
Description:	Docket Report	**Search Criteria:**	2:09-cv-00887-RSM

Billable Pages:	4	Cost:	0.32

Attachment F

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION	§ § § § § § § §

DECLARATION OF DAVID KOSCHITZKY

I, David Koschitzky, declare under penalty of perjury as follows:

1. I am the President of IKO Manufacturing Inc., IKO Pacific Inc, and IKO Chicago Inc., and have held those positions since 1991(IKO Manufacturing), 1996 (IKO Pacific) and at least 1991 (IKO Chicago). I have firsthand knowledge of the matters that are the subject of this Declaration, and I am competent to testify on the matters stated herein.

2. IKO Manufacturing Inc. markets and distributes shingles made in the United States. One of the facilities that manufactures such shingles is located in Kankakee, Illinois (currently accounting, on average, for approximately 40% of IKO shingles manufactured in the United States) . The Kankakee facility, which began operations in 2008, replaced an IKO shingle manufacturing facility that had been located and operated in Chicago, Illinois for several decades. IKO shingle production facilities in the United States are also located in Sumas, Washington and Wilmington, Delaware.

3. Customer complaints and warranty claims made regarding IKO shingles sold in the United States are processed and administered by an office that, from 1989 until 2008, was located in Chicago, Illinois and, since 2008, has been located in Kankakee, Illinois. This office also tests any sample(s) of IKO shingles sold in the United States submitted in connection with a warranty/defective product claim.

4. The marketing of IKO shingles in the United States, including distribution of advertising as well as marketing and promotional materials, has been managed by an office located in either Chicago, Illinois (for the period 1997 through 2008) or Kankakee, Illinois (2008-present).

5. Since 1987, the chief financial executive for IKO's shingle operations in the United States has maintained his principal office in either Chicago, Illinois or Kankakee, Illinois .

6. From 1981 to 1995, in my capacity as President for IKO's shingle operations in the United States, I maintained my principal office in Chicago.

7. IKO does not maintain any manufacturing facilities, customer service operations, marketing offices or corporate facilities in the state of New Jersey. Other than the sale of shingles, IKO has not maintained a corporate presence in New Jersey.

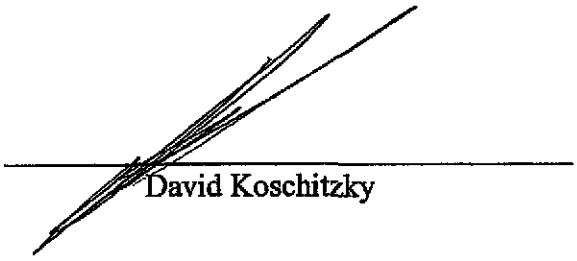
8. IKO does not maintain any manufacturing facilities, customer service operations, marketing offices or corporate facilities in the state of New York (IKO once rented a small office in Buffalo, but it was closed in the early 1980s). Other than the sale of shingles, IKO has not maintained a corporate presence in New York.

9. As indicated above, IKO has a shingle manufacturing facility in Sumas, Washington and sells shingles into Washington. IKO does not maintain any customer

service operations, marketing offices or other corporate facilities in the state of Washington.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 6, 2009.



David Koschitzky